

---

# TEXAS REGISTER

*Volume 30 Number 12*

*March 25, 2005*

*Pages 1709-1872*

---

*Kayla Dvorak  
11th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register*, (ISSN 0362-4781)**, is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$240. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

**Secretary of State –**  
Roger Williams  
**Director -** Dan Procter

**Staff**  
Ada Aulet  
Leti Benavides  
Dana Blanton  
Carla Carter  
Kris Hogan  
Robert Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Diana Muniz  
Shadrock Roberts

# IN THIS ISSUE

## **GOVERNOR**

Appointments .....	1715
--------------------	------

## **ATTORNEY GENERAL**

Request for Opinions .....	1717
Opinions .....	1717

## **PROPOSED RULES**

### **OFFICE OF THE SECRETARY OF STATE**

#### **ELECTIONS**

1 TAC §81.71 .....	1719
--------------------	------

### **OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

#### **PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR FUND**

10 TAC §§177.1 - 177.8 .....	1719
------------------------------	------

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **GENERAL POLICIES AND PROCEDURES**

13 TAC §§2.171, 2.172, 2.175 .....	1723
------------------------------------	------

#### **STATE PUBLICATIONS DEPOSITORY PROGRAM**

13 TAC §§3.1 - 3.17 .....	1724
13 TAC §§3.1 - 3.13 .....	1725

#### **SCHOOL LIBRARY PROGRAMS**

13 TAC §4.1 .....	1729
-------------------	------

### **RAILROAD COMMISSION OF TEXAS**

#### **LP-GAS SAFETY RULES**

16 TAC §§9.1 - 9.3, 9.6 - 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.35 - 9.38, 9.41, 9.51, 9.52, 9.54 .....	1737
16 TAC §9.33, §9.53 .....	1751
16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113, 9.115, 9.126, 9.129, 9.130, 9.132, 9.134, 9.140 - 9.143 .....	1751
16 TAC §9.114 .....	1757
16 TAC §§9.201 - 9.204, 9.208, 9.211 .....	1757
16 TAC §9.207 .....	1759
16 TAC §§9.303, 9.308, 9.312 .....	1759
16 TAC §9.403 .....	1760
16 TAC §§9.501 - 9.503, 9.506 - 9.508 .....	1760

### **TEXAS LOTTERY COMMISSION**

#### **ADMINISTRATION OF STATE LOTTERY ACT**

16 TAC §401.315 .....	1761
-----------------------	------

### **TEXAS FUNERAL SERVICE COMMISSION**

### **LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES**

22 TAC §203.29 .....	1762
22 TAC §203.29 .....	1763

## **ADOPTED RULES**

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **LIBRARY DEVELOPMENT**

13 TAC §§1.74, 1.81, 1.83 .....	1765
13 TAC §1.83 .....	1766

#### **STATE RECORDS**

13 TAC §§6.2 - 6.7, 6.9, 6.10 .....	1766
-------------------------------------	------

### **STATE BOARD FOR EDUCATOR CERTIFICATION**

#### **PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION**

19 TAC §§230.191, 230.193, 230.194 .....	1769
19 TAC §§230.307, 230.311, 230.315, 230.319 .....	1769

#### **GENERAL REQUIREMENTS APPLICABLE TO ALL CERTIFICATES ISSUED**

19 TAC §232.4 .....	1769
19 TAC §232.830, §232.840 .....	1770

#### **CATEGORIES OF CLASSROOM TEACHING CERTIFICATES**

19 TAC §233.13 .....	1770
----------------------	------

#### **STUDENT SERVICES CERTIFICATES**

19 TAC §239.101, §239.103 .....	1771
---------------------------------	------

#### **AMERICAN SIGN LANGUAGE CERTIFICATE**

19 TAC §240.1 .....	1771
---------------------	------

#### **AGENCY ADMINISTRATION**

19 TAC §§250.1 - 250.3 .....	1771
------------------------------	------

### **TEXAS STATE BOARD OF BARBER EXAMINERS**

#### **PRACTICE AND PROCEDURE**

22 TAC §51.3 .....	1772
22 TAC §51.93 .....	1772

### **TEXAS OPTOMETRY BOARD**

#### **PRACTICE AND PROCEDURE**

22 TAC §277.6 .....	1772
---------------------	------

#### **INTERPRETATIONS**

22 TAC §279.10 .....	1773
----------------------	------

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

<b>CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES</b>	
30 TAC §114.6 .....	1786
30 TAC §§114.312, 114.314 - 114.316, 114.318, 114.319 .....	1787
<b>TEXAS YOUTH COMMISSION</b>	
<b>ADMISSION, PLACEMENT, AND PROGRAM COMPLETION</b>	
37 TAC §§85.21, 85.25, 85.31 .....	1793
<b>ADMISSION AND PLACEMENT</b>	
37 TAC §§85.29, 85.33, 85.35, 85.39, 85.41, 85.43, 85.45, 85.51, 85.61 .....	1793
<b>ADMISSION, PLACEMENT, AND PROGRAM COMPLETION</b>	
37 TAC §§85.41, 85.45 .....	1793
37 TAC §§85.51, 85.55, 85.59, 85.61, 85.65, 85.69 .....	1796
37 TAC §§85.71, 85.75, 85.79, 85.85, 85.95 .....	1798
<b>TREATMENT</b>	
37 TAC §§87.75, 87.79 .....	1798
<b>YOUTH DISCIPLINE</b>	
37 TAC §§95.7, 95.9, 95.11, 95.17 .....	1798
<b>SECURITY AND CONTROL</b>	
37 TAC §§97.37, 97.40, 97.43, 97.45 .....	1799
<b>TEXAS WORKFORCE COMMISSION</b>	
<b>FOOD STAMP EMPLOYMENT AND TRAINING</b>	
40 TAC §§813.1 - 813.3 .....	1803
40 TAC §§813.11 - 813.14 .....	1804
40 TAC §813.13 .....	1805
40 TAC §§813.31, 813.32 .....	1805
40 TAC §813.41 .....	1806
<b>RULE REVIEW</b>	
<b>Adopted Rule Reviews</b>	
Texas Racing Commission .....	1809
Texas Water Development Board .....	1809
<b>TABLES AND GRAPHICS</b>	
.....	1811
<b>IN ADDITION</b>	
<b>Office of the Attorney General</b>	
Notice of Settlement of a Texas Solid Waste Disposal and Clean Air Acts Enforcement Action .....	1829
<b>Texas Building and Procurement Commission</b>	
Request for Proposal .....	1829

## **Coastal Coordination Council**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	1829
--	------

## **Comptroller of Public Accounts**

Amended Notice of Request for Proposals .....	1836
---	------

## **Office of Consumer Credit Commissioner**

Notice of Rate Ceilings .....	1837
-------------------------------	------

## **Credit Union Department**

Applications for a Merger or Consolidation .....	1837
Applications to Expand Field of Membership .....	1837
Notice of Final Action Taken .....	1838

## **Texas Commission on Environmental Quality**

Notice of District Petition .....	1838
Notice of Water Quality Applications .....	1838
Notice of Water Rights Application .....	1840
Proposed Enforcement Orders .....	1840

## **Office of the Governor**

Notice of Extension of Closing Date for Receipt of Applications for the Juvenile Accountability Block Grant (JABG) Program for Statewide Discretionary Projects .....	1843
Notice of Extension of Closing Date for Receipt of Applications for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program .....	1843
Notice of Extension of Closing Date for Receipt of Applications for the Title V - Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program .....	1843

## **Texas Health and Human Services Commission**

Notice of Adopted Payment Rates for Small State-Operated Facilities in the Intermediate Care Facilities for Persons With Mental Retardation Program .....	1843
---	------

## **Department of State Health Services**

Licensing Actions for Radioactive Materials .....	1844
Notice of Agreed Order with Brazos Valley Inspection Services, Inc. ....	1848
Notice of Agreed Order with Eastside Family Chiropractic, P.A. ....	1848
Notice of Opportunity for Certification as a Retail Electronic Cash Register System for the Special Supplemental Nutrition Program for Women, Infants and Children Electronic Benefits Transfer System .....	1848

Notice of Proposed Administrative Renewal of the Radioactive Material License of Everest Exploration, Incorporated .....	1849
--	------

## **Texas Department of Housing and Community Affairs**

Multifamily Housing Revenue Bonds (Lafayette Village Apartments) Series 2005 .....	1849
--	------

**Houston-Galveston Area Council**

Public Meeting Notice .....	1850
Public Meeting Notice .....	1850
Public Meeting Notice .....	1851
Request for Proposal .....	1851
Request for Proposal .....	1851

**Joint Financial Regulatory Agencies**

Notice of Public Meeting .....	1851
--------------------------------	------

**Texas Lottery Commission**

April 2005 End of Game Notice .....	1852
Instant Game Number 540 "Instant Bingo" .....	1852
Instant Game Number 584 "Gimme 5" .....	1859
Public Comment Hearing .....	1863

**Lower Rio Grande Valley Workforce Development Board**

Notice - Request for Business Plans for the Workforce System ...	1863
Notice - Request for Business Plans for Workforce System Lead Youth Contractor .....	1864

**Manufactured Housing Division**

Notice of Administrative Hearing .....	1864
--	------

**Public Utility Commission of Texas**

Notice of Application for a Certificate to Provide Retail Electric Service .....	1864
Notice of Application for a Certificate to Provide Retail Electric Service .....	1865
Notice of Application for a Certificate to Provide Retail Electric Service .....	1865
Notice of Application for a Certificate to Provide Retail Electric Service .....	1865
Notice of Application for a Certificate to Provide Retail Electric Service .....	1865

Notice of Application for a Certificate to Provide Retail Electric Service .....	1866
--	------

Notice of Application for a Certificate to Provide Retail Electric Service .....	1866
--	------

Notice of Application for a Certificate to Provide Retail Electric Service .....	1866
--	------

Notice of Application for Amendment to Service Provider Certificate of Operating Authority .....	1866
--	------

Notice of Application for Amendment to Service Provider Certificate of Operating Authority .....	1866
--	------

Notice of Filing Made for Approval of a Tariff Rate Change for a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171 .....	1867
---	------

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215 .....	1867
---	------

Notice of Petition for Waiver of Denial of Request for NXX Code .....	1867
---	------

Notice of Public Hearing to Address Complaints of Residents of the Pinewood Subdivision Against SBC Texas and the Quality of Telecommunications Service in the Pinewood Subdivision .....	1868
---	------

**Texas A&M University, Board of Regents**

Request for Proposal .....	1868
----------------------------	------

**Texas Department of Transportation**

Request for Competing Proposals and Qualifications .....	1868
--	------

**Texas Water Development Board**

Request for Applications for Planning and Project Grants Under the FEMA Flood Mitigation Assistance (FMA) Program .....	1869
---	------

**Texas Workers' Compensation Commission**

Correction of Error .....	1869
---------------------------	------

Correction of Error .....	1870
---------------------------	------

Invitation to Apply to the Medical Advisory Committee (MAC) ..	1870
--	------

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

---

## Appointments

### Appointments for March 7, 2005

Appointed to the Texas Department of Information Resources for a term to expire February 1, 2011, Phillip "Keith" Morrow of Southlake. Mr. Morrow is being reappointed.

Appointed to the University of Texas System Board of Regents for a term to expire February 1, 2011, Robert B. Rowling of Dallas. Mr. Rowling is being reappointed.

### Appointments for March 9, 2005

Appointed to the Texas Credit Union Commission for a term to expire February 15, 2007, Thomas Felton Butler of Deer Park (replacing James Burnett of Lewisville who resigned).

Appointed to the Texas Credit Union Commission for a term to expire February 15, 2011, Pete Snow of Texarkana (replacing Carlos Puente of Arlington whose term expired).

Appointed to the Texas Credit Union Commission for a term to expire February 15, 2011, Barbara Sheffield of Sugar Land (Ms. Sheffield is being reappointed).

Appointed to the Texas Private Security Board for a term to expire January 31, 2011, Howard H. Johnsen of Dallas (replacing Charlene Ritchey of Valley View whose term expired).

Appointed to the Texas Private Security Board for a term to expire January 31, 2011, Stella Caldera of Houston (replacing Jacob Monty of Houston whose term expired).

Rick Perry, Governor

TRD-200501105



# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0321-GA

#### Requestor:

Mr. Lowry Mays, Chair

Board of Regents

The Texas A&M University System

Post Office Box C-1

College Station, Texas 77844-9021

Re: Whether a contract between a component agency of Texas A&M University System and a municipally-owned utility must be approved by the System's governing board (Request No. 0321-GA)

#### Briefs requested by April 3, 2005

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at 512/463-2110.*

TRD-200501167

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: March 15, 2005



## Opinions

### Opinion No. GA-0309

The Honorable Carole Keeton Strayhorn

Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether 15 U.S.C. §77e, regulating the sale of unregistered securities, preempts section 74.401(a) of the Texas Property Code to the extent section 74.401(a) requires the comptroller to sell at public

sale an unclaimed security that is not a registered, marketable security (RQ-0273-GA)

## SUMMARY

With respect to disposing of unclaimed, unmarketable securities that have escheated to the state, which the comptroller must sell under Texas Property Code section 74.401(a), the comptroller generally is not an underwriter for purposes of 15 U.S.C. § 77e(a). Accordingly, she must sell the securities at public sale in compliance with Property Code section 74.401(a).

### Opinion No. GA-0310

Mr. Randall S. James, Commissioner

Texas Department of Banking

2601 North Lamar Boulevard

Austin, Texas 78705-4294

Re: Whether a funeral establishment must comply with a statutory requirement that it obtain a "cremation authorization form" signed by an "authorizing agent" when a purchaser in a prepaid funeral contract has previously specified disposition of the purchaser's remains by cremation (RQ-0271-GA)

## SUMMARY

A funeral establishment need not comply with a statutory requirement that it obtain a "cremation authorization form" signed by an "authorizing agent" when a purchaser in a prepaid funeral contract has previously specified disposition of the purchaser's remains by cremation.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at 512/463-2110.*

TRD-200501189

Nancy Fuller

Assistant Attorney General

Office of the Attorney General

Filed: March 16, 2005



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 81. ELECTIONS

##### SUBCHAPTER E. ELECTION DAY PROCEDURES

###### 1 TAC §81.71

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Office of the Secretary of State proposes the repeal of §81.71 concerning use of an election worker affidavit in lieu of identification. The repeal is necessary to establish conformity between state election voter identification requirements and the voter identification requirements of the federal Help America Vote Act of 2002. The rule had allowed election judges and clerks to attest to a voter's identity if the voter had no other form of identification.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. McGeehan has determined also that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be eliminating possible confusion from a rule whose statutory rationale, Section 63.010 of the Code, has been repealed.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The repeal is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

The Texas Election Code, Chapter 63.0101, is affected by this proposed repeal.

§81.71. *Use of Affidavit by Election Official in Lieu of Identification at Polling Place.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501112

Ann McGeehan

Director of Elections

Office of the Secretary of State

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 463-5650



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

#### CHAPTER 177. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR FUND

##### 10 TAC §§177.1 - 177.8

The Product Development and Small Business Incubator Board (board) proposes new Chapter 177, §§177.1, 177.2, 177.3, 177.4, 177.5, 177.6, 177.7 and 177.8, Product Development and Small Business Incubator Fund, relating to the issuance of Product Development and Small Business Incubator bonds authorized by Texas Constitution, Article XVI, Section 71, and the Product Development and Small Business Incubator Fund loan program authorized by Texas Government Code, Chapter 489, Subchapter D. The Product Development and Small Business Incubator Board is created by Texas Government Code, Chapter 489, Subchapter D, within the Texas Economic Development Bank (bank) in the Office of the Governor, Economic Development and Tourism Division.

The proposed new rules are necessary to implement a revolving loan program that will loan the proceeds of bonds issued pursuant to Texas Constitution, Article XVI, Section 71, and Texas Government Code, Chapter 489, Subchapter D. The program will provide financing to aid in the development and production, including the commercialization, of new or improved products in the state. The program will also provide financing to foster and stimulate the development of small business in the state.

Proposed §177.1 states that the rules apply to the Product Development and Small Business Incubator program.

Proposed §177.2 defines terms used in the rules.

Proposed §177.3 sets forth procedures for the board, including provisions for meetings, officers, committees, and public contact with the board.



Proposed §177.4 sets forth general uses of bond proceeds.

Proposed §177.5 sets forth general terms for loans made under the program.

Proposed §177.6 sets forth general application requirements for loans made under the program.

Proposed §177.7 sets forth general monitoring and reporting requirements for loan recipients.

Proposed §177.8 provides that loan recipients will be required to enter into a loan agreement that contains specific terms for the loan, including collateral and repayment requirements.

Mike Chrobak, Chief Financial Officer for the bank, has determined for each year of the first five years that the rules are in effect there will be no fiscal implications to the state or to local governments as a result of the rules. No cost to either government or the public will result from the rules. There will be no cost to small businesses or micro-businesses.

Mr. Chrobak has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules is the economic benefit to the state that results from the implementation of the program and resulting development of new products and businesses, particularly in the areas of biotechnology, biomedicine, and emerging technologies. No economic costs are anticipated to persons who are required to comply with the proposed amendments, other than the application fee and closing fee applicable to program users.

Written comments on the proposed rules may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, faxed to (512) 463-1932, or emailed to [rabbott@governor.state.tx.us](mailto:rabbott@governor.state.tx.us). Comments should be addressed to the attention of Robin Abbott, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed rules.

The rules are proposed pursuant to Texas Government Code §489.210, which directs the Product Development and Small Business Incubator Board to adopt rules for implementation of the program, and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 489, Subchapter D, is affected by this proposal.

#### §177.1. Scope.

The rules in this chapter apply to the Product Development and Small Business Incubator Fund established by Article XVI, Section 71, of the Texas Constitution and by Government Code, Chapter 489, Subchapter D.

#### §177.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant - means any individual, partnership, corporation or any other private entity, whether organized for profit, or a city, county, district, or any other political subdivision, public entity, quasi-governmental entity, or agency of the state or federal government that applies for funding under the program.

(2) Bank - means the Texas Economic Development Bank established under Texas Government Code, Chapter 489.

(3) Board - means the Product Development and Small Business Incubator Board.

(4) Financing - unless otherwise defined by Texas Government Code, Subchapter D, means a loan, loan guarantee, or equity investment from the product fund to a person for use in the development and production of a product in this state, or a grant, loan, or loan guarantee from the small business fund to a person for use in the development of a small business in this state.

(5) Office - means the Economic Development and Tourism Office in the Office of the Governor

(6) Product - unless otherwise defined by Texas Government Code, Subchapter D, includes an invention, device, technique, or process, without regard to whether a patent has been or could be granted, that has advanced beyond the theoretical stage and has or is readily capable of having a commercial application. The term does not include pure research (basic research).

(7) Product fund - means the Texas product development fund.

(8) Program - means the product development program or the small business incubator program.

(9) Small business fund - means the Texas small business incubator fund.

(10) Unit - means the State of Texas.

(11) User - means any individual, partnership, corporation, or any other private entity, whether organized for profit, or a city, county, district, or any other political subdivision, public entity, quasi-governmental entity, or agency of the state or federal government that has been approved for financing under the program.

(b) Amendment and suspension of the rules. These sections may be amended by the board at any time in accordance Government Code, Chapter 2001, Subchapter B, as amended. The board may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the board, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

#### §177.3. Procedures of the Board.

##### (a) Officers.

(1) The board chair shall be appointed by the Governor.

(A) The chair shall have the duty to generally direct, supervise, or control the business of the board and shall exercise supervisory duties as may be required or given her by the board from time to time.

(B) The chair is hereby authorized to represent, both verbally and in written communications, the official position of the board and the department on issues concerning the fund.

(2) Vice Chair. The vice chair of the board shall have such powers and duties as may be assigned to him by the chair and shall exercise the powers of the chair during any time that the chair is absent or unable to act. During any time that the vice chair is absent or unable to act, either the chair or the vice chair may designate another board member to exercise the powers of the chair.

(3) Secretary. The secretary shall keep or cause to be kept the minutes of all meetings and records of all actions of the board. During any time that the secretary is absent or unable to fulfill his duties, the secretary or the chair may designate another board member to exercise the powers of the secretary.

(4) To the extent permitted by law, the board may designate the chair, any member or members, or staff to act on behalf of the full board.

(b) Committees.

(1) Standing committees of the board. By a majority vote, the board may from time to time establish standing committees to assist the board in carrying out its duties. Such committees will be made up of not less than two and not more than four members of the board, and shall serve the board in an advisory capacity. Standing committees may be established to expire upon a certain term and/or may be dissolved at any time by a majority vote of the board.

(2) Advisory committees. By a majority vote, the board may from time to time establish advisory committees, made up of any individuals and for any legal purpose, to study, advise, make recommendations, and otherwise assist the board in carrying out its duties. Advisory committees may be established to expire upon a certain term and/or may be dissolved at any time by a majority vote of the board.

(3) Special committees, made up of any individuals and for any legal purpose, may be appointed and dissolved at any time by majority vote of the board.

(4) A member of a standing committee, an advisory committee, or a special committee shall serve without compensation, and members shall not be reimbursed for expenses unless reimbursement is deemed necessary and feasible by the board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other law.

(c) Meetings.

(1) The board shall hold regular meetings, as called by the chair, at least two times per year.

(2) Public appearances at board meetings. Members of the public may appear before the board regarding any issue under the board's jurisdiction.

(A) Unless otherwise required or instructed by staff, a person or organization wishing to be placed on the board meeting agenda must provide a written statement of such request. The request must identify the name of the presenter(s) and the topic of discussion desired to be discussed, and must be delivered to the office at 221 East 11th Street, Austin, Texas 78701, or mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0520. The request must include a contact person's name, mailing address, telephone number, and fax number, if available.

(B) Within 30 days after receipt of the request, the requestor will be notified of the time and place of the next board meeting for which the requestor may be placed on the agenda and the amount of time scheduled for the requestor's presentation.

(3) Public comment on scheduled agenda items. Member of the public may comment on scheduled agenda items as determined by the board, consistent with the Texas Open Meetings Act.

(A) Members of the public who wish to speak on a scheduled board agenda item must complete a comment sheet, identifying the presenter and the item to be addressed, prior to board discussion on the item. Comment sheets will be available to members of the public prior to and during board meetings.

(B) The chairman will recognize the presenter at the point in the agenda where the comments are most relevant and may determine an appropriate amount of time for the presentation. The board may further limit presentations at any time in accordance with the Act.

(4) To the greatest extent practicable and where consistent with the Texas Open Meetings Act, meetings shall proceed in accordance with Robert's Rules of Order. In the event a point of order is raised with respect to any process or action of the governing board, a determination regarding the validity of the process or action shall be within the discretion of the Governor's General Counsel division.

(5) Meeting accessibility. Any disabled or non-English speaking person who requires assistance in order to attend a board meeting will be reasonably accommodated whenever possible. Any person requiring an accommodation must contact the bank as set out in paragraph (1)(A) of this subsection.

(6) Written communication with the Board. Applications and other written communications regarding the program should be addressed to the attention of the Office of the Governor, Economic Development and Tourism Division, Texas Economic Development Bank, Attn: Product Development and Small Business Incubator Program, Post Office Box 12428, Austin, Texas 78711-2428.

§177.4. Bonds.

(a) Use of product development bond proceeds. The proceeds of the product development bonds may be used:

- (1) to fund reasonably required reserve accounts.
- (2) to pay costs incurred in issuing the bonds; and
- (3) to either:

(A) fund loans made by the bank to an applicant to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state; or

(B) refund or redeem all or part of any outstanding bonds of the corporation.

(b) Use of small business incubator bond proceeds. The proceeds of the small business incubator bonds may be used:

- (1) to fund reasonably required reserve accounts.
- (2) to pay all costs incurred in issuing the bonds; and
- (3) to either:

(A) fund loans made by the bank to an applicant to provide financing to foster and stimulate the development of small businesses in this state;

(B) refund or redeem all or part of any outstanding bonds of the corporation.

(c) In no event shall the board, the governing body, the office, or the unit have any obligation, financial or otherwise, to any person for failure to issue, sell, or deliver its bonds.

§177.5. Loans.

(a) Term of loan. The following requirements regarding the maximum term of a loan apply to any loan made under the program.

(1) Real property. The maximum term of a loan to finance real property may not exceed 20 years.

(2) Tangible personal property. The maximum terms of a loan to finance tangible personal property may not exceed 15 years.

(3) Other loans. The maximum term of a loan shall have a maturity satisfactory to the board and any third-party guarantor or insurer.

(b) Interest rate. The interest rate shall be determined by the board or its designee, considering, among other things, the funding

needed to cover the cost of bond financing, bond service providers and reasonable and customary administrative and programmatic costs.

(c) Amortization. Each loan shall be repaid over the term of the loan in a manner acceptable to the program and any third party, insurer, or guarantor of the loan.

(d) Terms and conditions of financing. Terms and conditions of financing must include requirements for, at minimum, the repayment of loan principal and interest payments and security or collateral, such as equity interest, royalties, patent rights, or a combination of those royalties and interests from or in the product or the proceeds of the product for which financing is requested.

(e) Security. Unless otherwise approved by the board, no loan may be made by the bank to an applicant if the applicant's equity participation in its business, if required by the bank, came from a loan secured by a lien on the business.

(f) Other terms. The bank and the board shall specify terms and conditions with respect to each investment as they deem to be reasonable, appropriate and consistent with the purposes and objectives of the fund.

#### §177.6. Application.

(a) To apply for financing from the fund, an applicant shall submit to the bank:

(1) an application for financing on a form prescribed by the bank; and

(2) an application fee as prescribed by the bank, payable to the Office of the Governor, Texas Economic Development Bank.

(b) The application must include a business plan containing the information required by the bank. All confidential and proprietary information shall be identified by the applicant in the business plan. This information must be treated as confidential as provided by the exception set forth in Government Code, Section 489.215, and other law. The business plan will include at a minimum, as applicable, information regarding:

(1) an executive summary which does not contain any confidential or proprietary information and is no longer than two typewritten, double spaced pages;

(2) the prior three years audited financial statements, as applicable, and projected financial statements, including loan repayment. The financial documents must include the applicant's income statement, balance sheet and cash flow statement;

(3) the applicant's present markets and market prospects;

(4) a discussion of the economic and other benefits to the State of Texas, including the anticipated effects on the emerging technology industry cluster(s) in which the applicant belongs;

(5) the background and integrity of the applicant's management;

(6) a statement of the feasibility of the product for which financing is requested, including the state of development of any product to be developed and the proposed schedule of its commercialization;

(7) if applicable, documentation of attempts to obtain private financing;

(8) a financial plan that shows how loan proceeds will generate income to repay the loan;

(9) use of funds and business model;

(10) the name, street address, mailing address, telephone number, fax number and electronic mail address for the business and the business' authorized officer with a signed statement from each, as applicable, that the contents of the application are true and correct to their best knowledge and belief; and

(11) authorization of the applicant's board of directors to participate in the program.

(c) In determining which products and businesses are eligible for financing, the bank shall consider criteria, which includes but is not limited to, the following:

(1) the product or business for which financing is requested is economically sound;

(2) there is a reasonable expectation that the product or business will be successful;

(3) the product or business will create or preserve jobs and otherwise benefit the economy of the state;

(4) the applicant has the management resources and other funding to complete the project;

(5) financing is necessary because full financing is unavailable in traditional capital markets or credit has been offered on terms that would preclude the success of the project;

(6) there is reasonable assurance that the potential revenues to be derived from the sale of the product will be sufficient to repay any financing approved by the bank;

(7) the extent to which the product or business will leverage non-state funds;

(8) the number of jobs to be created or retained in the state; and

(9) availability of program funds.

(d) In determining eligible products and businesses, the bank shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology, biomedicine, and such other emerging technologies or areas that have the greatest likelihood of commercial success, job creation, and job retention in this state.

(e) The bank shall give further preference to providing financing to projects or businesses that are:

(1) grantees under the small business innovation research program established under 15 U.S.C. Section 638, as amended;

(2) companies formed in this state to commercialize research funded at least in part with state funds;

(3) applicants that have acquired other sources of financing;

(4) companies formed in this state and receiving assistance from designated state small business development centers; or

(5) applicants who are residents of this state doing business in this state and performing financed activities predominantly in this state.

(f) After considering the application and all other information it considers relevant, the bank shall approve or deny the application and promptly notify the applicant of its decision.

(g) Application and closing fee. The Bank shall charge an application fee of \$500.00 for all applications. In addition, successful

applicants may be required to pay, upon financing by the bank, a closing fee.

§177.7. Monitoring and Reporting Requirements.

(a) Any user under the program will be required to meet reporting and compliance requirements, as set out in the agreement between the user and the bank, including, but not limited to:

(1) annual submission of audited fiscal year end financial statements;

(2) annual update, including but not limited to efforts and progress toward commercialization;

(3) the use of money distributed through either fund;

(4) notification within 10 days of a user's name change or any other non-material change in the user's product or business;

(5) notification in advance of any anticipated material change to the user's product or business; and

(6) notification within five days of any material change to the user's product or business.

(7) In the event of a name change, sale, or assumption, or similar change, notification to the bank must include a copy of the certificate of amendment to the articles of incorporation, and/or the d/b/a statement under which the user operates, filed with the Texas Secretary of State, as applicable.

(b) Projects may be subject to on site monitoring visits, by the board, the bank or its designee.

§177.8. Loan Agreements.

Before providing financing to a person, the bank will enter into an agreement with the person that will set forth the terms and conditions of the loan. The agreement must ensure the proper use of funds and will include, but is not limited to, provisions for collateral to secure the loan, reporting requirements, and repayments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2005.

TRD-200501123

Mae C. Jemison, M.D.

Chair

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 936-0181



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER C. GRANT POLICIES

##### DIVISION 7. TEXAS READS GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

### 13 TAC §§2.171, 2.172, 2.175

The Texas State Library and Archives Commission proposes to amend §§2.171, 2.172, and 2.175, regarding the Texas Reads Grant Program. These proposed amendments will affect the guidelines for the next round of grant awards to Texas public libraries.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Littrell has also determined that for each of the first five years the proposed amended sections are in effect the public benefits anticipated as a result of enforcing the proposed amended sections will be to allow operation of the Texas Reads Grant Program, and to protect the interests of the state as required by law. There are no cost implications to either small businesses or persons required to comply with the proposed amendments.

Written comments on the proposed amendments may be submitted to Deborah Littrell, Library Development, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711, or by fax to (512) 463-8800.

The amendments are proposed under the authority of Government Code §441.0092, that provides the commission authority to make grants to fund programs to promote reading and literacy through public libraries, determine eligibility standards for grants, provide procedures for grant applications, and determine the recipient and amount of each grant. The collection of revenue to fund the grant program is authorized under Transportation Code §504.616.

The proposed amendments affect the Government Code §441.0092 and the Transportation Code §504.616.

§2.171. Eligible Applicants.

Public libraries and local public library systems, through their governing authority (city, county, corporation, or district) are eligible to apply for grants. To receive a grant, applicants must be members of the Texas Library System for the fiscal year the grant contracts are issued. Libraries or library systems will not be awarded more than one grant in a single grant cycle. Libraries or library systems will not be awarded a grant in two consecutive grant cycles.

§2.172. Eligible Expenses.

(a) This grant program will fund costs such as materials, professional services (e.g. speakers' fees, temporary personnel), and other expenses needed to implement a program.

(b) This grant will not fund the following:

(1) Building construction or expansion;

(2) Food, beverages, gifts, prizes;

(3) Equipment or technology not specifically needed to provide a reading or literacy program;

(4) Collection development projects with no programming component;

(5) Advertising or public relations costs that are not directly related to promoting awareness of grant-funded activities;

(6) Performers or presenters not directly related to reading promotion;

(7) [(4)] Transportation/travel for program participants; or

(8) [(5)] Permanent staff salaries.

§2.175. *Decision Making Process.*

(a) To be considered for funding by the Texas State Library and Archives Commission, an application must receive a minimum adjusted mean score of 50 percent of the maximum points available. Commission staff will tabulate the panel's work using a method that eliminates the high and low score, called an adjusted mean score.

(b) Applications will be ranked in priority order by score for consideration by the commission.

(c) If insufficient funds remain to fully fund the next application, staff will make a determination regarding whether to negotiate a reduced grant with the next ranked applicant, or retain the balance for a later funding cycle.

(d) If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The panel will be informed of this situation prior to presentation to the commission. [~~A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.~~]

(e) If the panel is unable to produce a set of recommendations for funding, the staff will use the same evaluation procedures to develop recommendations to the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501116

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 463-5459



## CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

### 13 TAC §§3.1 - 3.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Library and Archives Commission proposes to repeal Chapter 3, §§3.1 - 3.17, regarding the State Publications Depository Program. Staff review of the rules governing that service indicates that the chapter needs to be restructured and language needs to be updated to improve clarity of the rules and to bring the rules in line with current practices. The commission proposes to replace the repealed rules with an updated, restructured set of rules governing this service.

Beverly Shirley, Division Director has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the repeals.

Ms. Shirley has also determined that for each of the first five years the repeals are in effect the public benefits anticipated as a result of enforcing the repeals will be to update the rules and to

bring the rules for deposit of state publications into closer alignment with current practices. There is no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the repeals may be submitted to Beverley Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The repeals are proposed under Government Code §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) - (9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database.

The repeals affect Government Code, §§441.101 - §441.106.

§3.1. *Definitions.*

§3.2. *State Publications in Multiple Information Formats.*

§3.3. *Standard Deposit Requirements for State Publications in All Formats.*

§3.4. *Special Depository Requirements for Print State Publications.*

§3.5. *Standard Exemptions for State Publications in Print Format Only.*

§3.6. *Standard Exemptions for State Publications in Electronic Format Only.*

§3.7. *Special Exemptions.*

§3.8. *State Publications Contact Person.*

§3.9. *Publication Reporting Form.*

§3.10. *Designation of Depository Library Status for Printed State Publications.*

§3.11. *Termination of Designated Depository Library Status for Printed State Publications.*

§3.12. *Minimum Standards for Designated Print Depository Libraries.*

§3.13. *Designation of Depository Library Status for Electronic State Publications.*

§3.14. *Termination of Designated Depository Library Status for Electronic State Publications.*

§3.15. *Minimum Standards for Designated Electronic Depository Libraries.*

§3.16. *Compliance Review/Inspection of Designated Depository Libraries.*

§3.17. *TRAIL Grant Database.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501118

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 463-5459

### 13 TAC §§3.1 - 3.13

The Texas State Library and Archives Commission proposes new Chapter 3, §§3.1 - 3.13, regarding the State Publications Depository Program. Staff review of the rules governing that service indicates that the existing chapter needs to be restructured and language needs to be updated to improve clarity of the rules and to bring the rules in line with current practices. The commission proposes to repeal the rules, replacing them with an updated, restructured set of rules governing this service.

Beverly Shirley, Division Director has determined that for the first five-year period the new rules are in effect there will be no fiscal implications for state or local government as a result of the new rules.

Ms. Shirley has also determined that for each of the first five years the new rules are in effect the public benefits anticipated as a result of enforcing the new sections will be to update the rules and to bring the rules for deposit of state publications into closer alignment with current practices. There is no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the new rules may be submitted to Beverly Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The new rules are proposed under Government Code §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) - (9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database.

The new rules affect Government Code, §§441.101 - 441.106.

#### §3.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency Advisory Committee--The advisory committee for the TRAIL grants database program authorized by Government Code §441.010(e).

(2) Commission--The Texas State Library and Archives Commission.

(3) Depository library--Any library that the Director and Librarian or the commission designates as a depository library for state publications.

(4) Depository publication--A state publication in any format distributed from or on behalf of the Texas State Library and Archives Commission to a depository library.

(5) Director and Librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

(6) Electronic external storage devices--Removable electronic media used to store and transfer electronic information.

(7) Electronic format--A form of recorded information that can be processed by a computer.

(8) Grant--shall have the meaning given in Government Code §441.010(a)(2).

(9) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(10) Internet publication--A publication is that published on the Internet as a file or files accessible by Internet connection.

(11) On-line--Accessible via a computer or terminal, rather than on paper or other medium.

(12) Physical format--A tangible system for the compilation and presentation of information, including print publications and electronic external storage devices as defined in this chapter.

(13) Print publication--a publication

(A) that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that are not specifically cited in this definition, and

(B) that is not an Internet publication as defined in this section.

(14) Public Advisory Committee--The advisory committee for the TRAIL grants database authorized by Government Code §441.010(g).

(15) Publicly distributed--Provided to persons outside of the agency, in print or other physical medium, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency.

(16) Serial--Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.

(17) State agency--Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

(18) State publication--Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency, and is publicly distributed by or for the agency. The term does not include information the distribution of which is limited to contractors with or grantees of the agency, persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552 if it does not otherwise meet the definition of a state publication.

(19) State Publications Depository Program--A program of the Texas State Library and Archives Commission designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(20) Texas Records and Information Locator (TRAIL)--A program of the Texas State Library and Archives Commission designed to locate, index, and make available state publications in electronic format.

(21) Texas State Library and Archives Commission--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(22) Uniform Resource Locators--The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

§3.2. Standard Requirements for State Publications in All Formats.

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the State Publications Depository Program in §3.6 of this title (relating to Standard Exemptions for State Publications in All Formats) or under §3.7 of this title (relating to Special Exemptions).

(b) When a state publication is distributed to the public in multiple formats simultaneously, state agencies are required to provide access to or copies of that publication to the commission in all formats in which the publication is publicly distributed. State agencies are not required to provide copies to the commission of publications on electronic external storage devices if the state publications are made available by an Internet connection.

(c) Records retention. State agencies are reminded that compliance with this chapter does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.

(d) Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.

§3.3. Standard Deposit and Reporting Requirements for State Publications in Physical Formats.

(a) The standard number of copies of state publications in physical formats to be deposited is based on the number of copies produced, the type of publication or the medium in which it is made available.

(1) For most state publications in physical formats:

(A) If 300 or more copies are produced, fifty-five (55) copies must be deposited with the State Publications Depository Program.

(B) If fewer than 300 copies are produced, four (4) copies must be deposited with the State Publications Depository Program.

(2) Some state publications in physical formats must be deposited in the following minimum quantities regardless of the number of copies or different media originally intended to be produced by the agency. Agencies are expected to incorporate these deposit requirements into their printing or reproduction orders:

(A) Fifty-five (55) copies of the following state publications must be deposited with the State Publications Depository Program:

(i) Annual or biennial reports (narrative description and statistics of programs, services, activities);

(ii) Statistical compilations (annual or multi-year);

(iii) Codes (published as compendia);

(iv) Regulations (published as compendia); and

(v) Directories (of facilities, services, providers).

(B) Three (3) copies of the following state publications must be deposited with the State Publications Depository Program:

(i) Annual financial reports;

(ii) Annual operating budgets; and

(iii) State or strategic plans (for agency services, programs within its jurisdiction).

(C) Two (2) copies of the following state publications must be deposited with the State Publications Depository Program:

(i) Requests for legislative appropriations; and

(ii) Quarterly and annual reports of measures.

(b) For state publications available in electronic format but not by an Internet connection:

(1) State agencies must deposit electronic state publications on electronic external storage devices only when they are not accessible to the public by Internet connection.

(2) State agencies must meet the following requirements when submitting state publications on electronic external storage devices:

(A) Computer Diskette. One (1) copy of all applicable state publications must be submitted on three and one-half inch, 1.44 megabyte high density disks, configured to an MS-DOS platform and formatted in ASCII (American Standard Code for Information Interchange) or other software approved by the Texas State Library and Archives Commission.

(B) Compact Disks--Read-Only Memory. One (1) copy of all applicable state publications must be submitted on disks that adhere to standards of ISO (International Organization of Standards) 9660. Files shall be formatted in ASCII, or other software that is provided and is in the public domain or has been purchased with a license agreement to distribute it with each copy of the disk. If the file is compressed, software and instructions must be included on the disk to decompress all data directly to a hard drive from commands found in a file on the root directory.

(C) State Publications on Other Electronic External Storage Devices. For new or improved media that may become commonly available, one (1) copy of all applicable state publications may be submitted. All such devices or media for submitting state publications must be approved by the Director and Librarian and must adhere to standards set by the Texas State Library and Archives Commission.

(c) Reporting

(1) Each state agency must submit a publication reporting form that describes state publications in physical formats as they become available.

(2) State publications submitted in physical formats must be listed on a paper form that is enclosed with each shipment.

§3.4. Standard Deposit and Reporting Requirements for State Publications that are Internet Publications.

For state publications available by an Internet connection:

(1) State agencies are required to provide the Texas State Library and Archives Commission with guaranteed access, at no charge, to the agencies' Internet publications;

(2) State agencies must meet the following minimum requirements when providing state publications by Internet connection:

(A) Accessibility. State publications made available by an Internet connection shall be accessible:

(i) by anonymous File Transfer Protocol (FTP), Telnet, Gopher, Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(ii) by a Uniform Resource Locator (URL) provided by the agency that describes each Internet publication's specific name and location on the Internet; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Indexing. Indexed Internet publications shall be accessible through indexes that meet current ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standards and that adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

(C) Availability. Issues of a serial Internet publication and current versions only of all other Internet publications shall be accessible on-line by Internet connection for two years from the date of release or last modification with an average availability by the Internet connection of 23 out of 24 hours, seven days a week.

(D) Supersession. For Internet publications that are updated as needed to keep information accurate, or that are replaced by other publications, the superseded versions must remain available by Internet connection.

(3) Each state publication made available by Internet connection must include descriptive information in:

(A) a Title tag;

(B) a Description or DC.Description meta tag that includes a narrative description of the publication;

(C) a Keyword or DC.Subject.Keyword meta tag that includes selected terms from within the publication;

(D) a Subject or DC.Subject meta tag that includes terms from the TRAIL subject list;

(E) a Type or DC.Type meta tag that includes terms from the TRAIL publication type list. This tag may be omitted if the appropriate type for the publication is "Web documents - Undefined."

(4) State agencies are advised to review the rules in 1 TAC §206.5 (relating to Linking and Indexing State Web Sites).

### §3.5. TRAIL Grant Database.

#### (a) Agency Requirements

(1) The commission, in cooperation with the Department of Information Resources, shall establish an electronically searchable central database accessible through the commission's on-line access system that allows a person to:

(A) use keyword searches to discover all available state agency grant opportunities;

(B) obtain basic information regarding each available state agency grant opportunity, including basic information about the program that the grant recipient will implement, the geographic area in which the grant recipient will implement the program, the eligibility requirements for obtaining the grant, and the grant application process; and

(C) electronically link to the portion of the granting agency's website at which the person may obtain more detailed information about each available state agency grant opportunity.

(2) Each state agency that will award a grant shall, concurrently with any other action the agency takes to inform the public or any person about the grant opportunity, report to the commission the information prescribed in paragraph (3) of this subsection, so that the commission may include information about the grant in the electronically searchable central database.

(3) Each state agency shall report all agency-administered grant opportunities through the use of meta tags on Web pages that describe or link to a description of that grant opportunity. Those meta tags shall meet the requirements in §3.4(3) of this title and shall include a Type or DC.Type meta tag of "Grants or Funding Opportunities."

#### (b) Agency Advisory Committee

(1) Upon appointment by the governor, the Agency Advisory Committee shall meet to:

(A) gather input from public and other users of the database; and

(B) advise the commission regarding the development of the database and regarding state agency reporting of grant opportunities.

(2) The Agency Advisory Committee shall meet in Austin.

(3) A state agency that is represented on the Agency Advisory Committee by a person who is not based in the Austin area is responsible for any travel expenses incurred by its representative.

(4) The Agency Advisory Committee shall elect a chair from among members annually.

(5) The Agency Advisory Committee shall meet at the call of the chair or of the Director and Librarian, at least once annually.

(6) The Director and Librarian shall appoint a liaison to the Agency Advisory Committee to represent the commission.

#### (c) Public Advisory Committee

(1) The commission shall appoint a Public Advisory Committee composed of five public members to evaluate the operation of the electronically searchable central database annually.

(2) The commission shall appoint members of the Public Advisory Committee from among Texas residents with interest and experience in seeking and applying for grants.

(3) Members shall serve three-year terms beginning September 1. At its first meeting, members shall draw lots to establish an initial one-year term, two initial two-year terms, and two three-year terms. When a vacancy occurs, the commission may make a new appointment to complete the designated term of office. Members may be reappointed for two full terms.

(4) The Public Advisory Committee shall elect a chair from among members annually.

(5) The Public Advisory Committee shall meet at the call of the chair or of the Director and Librarian, at least once annually.



(6) The Director and Librarian shall appoint a liaison to the Public Advisory Committee to represent the commission.

§3.6. Standard Exemptions for State Publications in All Formats.

The Director and Librarian has exempted from deposit requirements certain kinds of state publications. A state agency is not required to deposit or provide access to these state publications:

- (1) agendas;
- (2) advertisements;
- (3) alumni materials;
- (4) announcements;
- (5) artwork;
- (6) calendars;
- (7) contracts;
- (8) correspondence;
- (9) course schedules;
- (10) curriculum catalogs (departmental only)
- (11) drafts of plans, reports;
- (12) fiction;
- (13) forms;
- (14) fund raising materials;
- (15) grant proposals, bids;
- (16) hearings (transcripts of);
- (17) job listings;
- (18) literary criticisms;
- (19) memorabilia;
- (20) memoranda (including e-mail);
- (21) news or press releases (exemption applies to physical formats only)
- (22) newsletters and subscriber lists meant only for employee, faculty or student use;
- (23) notices of sale;
- (24) opinions and orders issued by state courts;
- (25) daily or weekly periodicals (that are summarized in monthly or quarterly publications);
- (26) personnel manuals;
- (27) photographs;
- (28) poetry;
- (29) policy handbooks intended only for internal use;
- (30) programs (announcements of events, training sessions);
- (31) recruitment materials;
- (32) reprints (reissued without change);
- (33) stationery;
- (34) student publications (those produced by students);
- (35) telephone directories meant only for employee, faculty, or student use; and

(36) volunteer newsletters.

§3.7. Special Exemptions.

Upon written application, the Director and Librarian may exempt specific kinds of state publications and information formats from deposit requirements.

§3.8. State Publications Contact Person.

Each state agency must designate in writing or via the Internet one person to act as liaison with the State Publications Depository Program for state publications in physical formats and one person to act as liaison with the State Publications Depository Program for Internet publications; an agency may elect to designate the same person to fulfill the liaison duties for both types of publications. Agencies may request, by writing to the Program, to designate additional liaisons in cases where the size and complexity of the agency's publishing activities merit additional coverage. Each liaison must deposit all state publications within the scope of his or her designated responsibility, provide information and resolve problems about them, maintain records of the agency's state publications, negotiate exemptions from deposit requirements, and submit publication reporting forms.

§3.9. Designation and Termination of Depository Library Status for State Publications in Physical Formats.

(a) The director of a library in Texas may apply in writing to the Director and Librarian for designation as a depository library for state publications in physical formats. After considering the need for additional access to state publications in physical formats by the public, the number of copies of state publications available for distribution to depository libraries, the geographical distribution of existing depository libraries, whether the applying library will provide access to a unique, unserved or underserved population, whether it will provide superior access, whether it is a publicly-supported institution and whether it can meet the minimum standards outlined in §3.10 of this title (relating to Minimum Standards for Designated Depository Libraries for State Publications in Physical Formats), the Director and Librarian may grant the applying library depository library status. The Director and Librarian shall execute an agreement with the library setting forth the responsibilities of the program and of the depository library. The director of an applying library whose application is denied may appeal the decision to the Texas State Library and Archives Commission.

(b) Depository status may be terminated by either party upon six-months' written notice. In the event of termination, title to the collection shall be retained by the Texas State Library and Archives Commission. The Texas State Library and Archives Commission may remove the collection to the Texas State Library and Archives Commission or to another depository library.

§3.10. Minimum Standards for Designated Depository Libraries for State Publications in Physical Formats.

(a) To meet minimum standards, a designated depository library for state publications in physical formats must:

- (1) process and shelve state publications in physical formats within 30 days of receipt;
- (2) check all shipping lists to insure that state publications in physical formats are received, and if not, promptly claimed;
- (3) mark and date state publications in physical formats received in shipments to distinguish them from state publications received from other sources;
- (4) provide an orderly, systematic record of depository holdings and subsequent arrangement of state publications in physical formats;

(5) furnish a minimum of 400 linear feet of shelving for depository publications in physical formats;

(6) designate a professional librarian to be responsible for state publications in physical formats and to act as liaison with the Texas State Library and Archives Commission;

(7) provide reference service from state publications to all Texas residents;

(8) provide access to state publications through reference tools, public catalogs, and national, state, and local computer networks that is comparable with that of similar information available through the library;

(9) implement a circulation and interlibrary loan policy for state publications in physical formats that is consistent with the institution's general loan policy;

(10) retain state publications in physical formats for a minimum of five years unless otherwise instructed, and submit a disposal list in electronic format to the Texas State Library and Archives Commission for distribution before such state publications are discarded;

(11) provide appropriate equipment for the retrieval, use and storage of all state publications in physical formats;

(12) publicize state publications through displays and announcements of significant new state publications; and

(13) display a sign, identifying its depository library status.

(b) The Director and Librarian may exempt depository libraries from some or all of the minimum standards defined in this section upon written request from the depository library. Justification for such exemptions may include factors such as:

(1) cooperative agreements made between depository libraries regarding alternate methods of providing state publications to citizens of the state, or

(2) extenuating circumstances at a depository library that constitute an undue burden on the library in managing its state publications collection.

**§3.11. Designation and Termination of Depository Library Status for State Publications Published as Internet Publications.**

(a) The director of a library in Texas may apply in writing to the Director and Librarian for designation as a depository library for state publications published as Internet publications. After considering the need for additional access to state publications by the public, whether it will provide superior access, whether it is a publicly-supported institution and whether it can meet the minimum standards outlined in §3.12 of this title (relating to Minimum Standards for Designated Depository Libraries for State Publications Published as Internet Publications), the Director and Librarian may grant the applying library depository library status. The Director and Librarian shall execute an agreement with the library setting forth the responsibilities of the program and of the depository library. The director of an applying library whose application is denied may appeal the decision to the Texas State Library and Archives Commission.

(b) Depository status may be terminated by either party upon six-months' written notice.

**§3.12. Minimum Standards for Designated Depository Libraries for State Publications Published as Internet Publications.**

To meet minimum standards, a designated depository library for Internet publications must:

(1) enter into an agreement with the Texas State Library and Archives Commission spelling out specific terms and conditions for the library's depository library status;

(2) maintain an Electronic Depository Program server, including the provision of trained technical staff, climate controlled space, electrical power and Internet connectivity;

(3) designate an appropriate contact person to be responsible for electronic state publications and to act as liaison with the Texas State Library and Archives Commission; and

(4) provide, in a manner that is consistent with the depository library's general interlibrary loan and copying policies, print copies of Internet-accessible electronic state publications to requesting libraries in Texas upon demand to fill patron requests.

**§3.13. Compliance Review/Inspection of Designated Depository Libraries.**

The Director and Librarian, or designee, may inspect designated depository libraries to determine compliance with the minimum standards outlined in §3.10 of this title (relating to Minimum Standards for Designated Depository Libraries for State Publications in Physical Formats) and §3.12 of this title (relating to Minimum Standards for Designated Depository Libraries for State Publications Published as Internet Publications). A compliance review self-study report may be distributed by the Texas State Library and Archives Commission to the designated depository libraries to determine compliance in lieu of an inspection. The inspection or compliance review shall determine designated depository libraries' compliance with minimum standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501119

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 463-5459



## CHAPTER 4. SCHOOL LIBRARY PROGRAMS

### SUBCHAPTER A. STANDARDS AND GUIDELINES

#### 13 TAC §4.1

The Texas State Library and Archives Commission proposes to amend §4.1, relating to School Library Standards. Education Code §33.021 provides that the commission adopt standards for school library services. The standards are a professional tool for objective assessment based on recognized measures of performance, and are based on research that shows a correlation between school library resources and services and greater student achievement.

The Standards and Guidelines are available at <http://www.tsl.state.tx.us/ld/pubs/index.html>. The Standards and Guidelines are also available for inspection in Room 205 of the Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin Texas.

The "School Library Programs: Standards and Guidelines for Texas" were developed by a committee appointed by the director and librarian of the Texas State Library and Archives Commission. The State Board of Education was consulted in the formation of the committee and members included representatives of school districts, as well as citizens, representatives from colleges and universities, and staff from Educational Service Centers, the Texas Education Agency, and the Texas State Library and Archives Commission.

The proposed amendments to the rule standardize the name of the document. In addition, the standards document is changed by moving all material other than the introduction and strategies for librarians from the document to supplementary material.

Deborah Littrell, Director, Library Development Division, has determined that for each year of the first five years after the adoption of the proposed rules, there will be no fiscal implications for local governments as a result of adoption of the rules, because the commission's proposed rules are voluntary for local school districts.

Ms. Littrell has also determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the section will provide a more streamlined document for librarians and school administrators, and the benefit to the state is to make the standards clearer and simpler to deal with. There is no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Written comments on the proposed section may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927, or electronically to [deborah.littrell@tsl.state.tx.us](mailto:deborah.littrell@tsl.state.tx.us) no later than 5:00 p.m. CST, 30 days after publication.

The amendment is proposed pursuant to Education Code §33.021 which provides that the commission, in consultation with the State Board of Education, shall adopt standards for school library services.

Education Code §33.021 is affected by the proposed rule.

§4.1. School Library Programs:[:] Standards and Guidelines for Texas.

(a) The School Library Programs:[:] Standards and Guidelines for Texas, which are available at <http://www.tsl.state.tx.us/ld/pubs/index.html>, are adopted by the Texas State Library and Archives Commission. The Standards and Guidelines are based on the work and recommendations of an advisory committee formed to review and update the current Standards and Guidelines.

(b) The School Library Programs:[:] Standards and Guidelines for Texas are applicable to local Texas school districts (Independent, consolidated, common, or municipal districts and charter schools accredited by the Texas Education Agency as provided by TEC Chapter 11 Subchapter D, Chapter 39).

(c) The School Library Programs:[:] Standards and Guidelines for Texas, describe six components for school library programs: Learner-Centered Teaching and Learning, Learner-Centered Program Leadership and Management, Learner-Centered Technology and Information Access, Learner-Centered Library Environment, Learner-Centered Connections to Community, and Learner-Centered Information Science and Librarianship. The Standards and Guidelines describe four levels of achievement, below standard, acceptable,

recognized, and exemplary, for the goals within each component. [The Standards and Guidelines also include output measures to use to quantify the level of use of the school library program and services; as well as outcome-based evaluation measures to demonstrate the impact of school library programs. The vision, mission, and core values of school library programs are discussed. The Standards and Guidelines include appendices that provide a glossary of terms; a bibliography; a list of committee members; and an example of an annual report for a library program that includes a profile and assessment in accordance with these Standards and Guidelines.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501117

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 463-5459



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas proposes amendments, repeals, and new sections in 16 TAC Chapter 9, relating to LP-Gas Safety Rules. Specifically, the Commission proposes in Subchapter A, relating to General Requirements, amendments to §§9.1 - 9.3, 9.6 - 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, relating to Application of Rules, Severability, and Retroactivity; Definitions; LP-Gas Report Forms; Licenses and Fees; Application for License and License Renewal Requirements; Application for a New Certificate; Requirements for Certificate Renewal; Rules Examination; Previously Certified Individuals; Trainees; General Installers and Repairman Exemption; Hearings for Denial, Suspension, or Revocation of Licenses or Certificates; Designation and Responsibilities of Company Representatives and Operations Supervisors; Reciprocal Examination Agreements with Other States; Franchise Tax Certification and Assumed Name Certificates; Changes in Ownership, Form of Dealership, or Name of Dealership; Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; the repeal of §9.33, relating to LP-Gas Welding Advisory Committee; new §9.35, relating to Written Procedure for LP-Gas Leaks; amendments to §§9.36 - 9.38, 9.41, 9.51, 9.52, relating to Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; Reporting Unsafe LP-Gas Activities; Testing of LP-Gas Systems in School Facilities; General Requirements for Training and Continuing Education; and Training and Continuing Education Courses; the repeal of §9.53, relating to Continuing Education Credit for Previous Courses; and amendments to §9.54, relating to Commission-Approved Outside Instructors.

In Subchapter B, relating to Stationary Installations and Container Requirements, the Commission proposes amendments

to §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; Emergency Use of Proposed Stationary LP-Gas Installations; Maintenance; the repeal of §9.114, relating to Odorizing and Reports; amendments to §§9.115, 9.126, 9.129, 9.130, 9.132, 9.134, 9.140, 9.143, relating to Examination and Testing of Containers; Appurtenances and Equipment; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; Sales to Unlicensed Individuals; Connecting Container to Piping; Uniform Protection Standards; Uniform Safety Standards; LP-Gas Container Storage and Installation Requirements; and Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individuals or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, relating to Vehicles and Vehicle Dispensers, the Commission proposes amendments to §§9.201 - 9.203, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; new §9.204, relating to Maintenance of Vehicles; the repeal of §9.207, relating to Requirements for Movable Fuel Storage Tenders Such as Farm Carts; and amendments to §9.208, and §9.211, relating to Testing Requirements; and Markings.

In Subchapter D, relating to Adoption by Reference of NFPA 54 (National Fuel Gas Code), the Commission proposes amendments to §§9.303, 9.308, and 9.312, relating to Exclusion of NFPA 54, §6.31; Identification of Piping Installation; and Certification Requirements for Joining Methods.

In Subchapter E, relating to Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission proposes amendments to §9.403, relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

The Commission also proposes the repeal of Subchapter F, relating to Adoption by Reference of NFPA 51 (Standard for the Design and Installation of Oxygen Fuel-Gas Systems for Welding, Cutting, and Allied Processes), including §§9.501 - 9.503, and 9.506 - 9.508, relating to Adoption by Reference of NFPA 51; Clarification and/or Exclusion of Definitions in NFPA 51; Exclusion of Certain Sections and Chapters 6, 7, and 8 in NFPA 51; Sections in NFPA 51 Adopted with Additional or Alternative Language; Container Installation Requirements; and LP-Gas Pressure Going into a Building.

The Commission proposes these amendments, repeals, and new rules to update some training and continuing education requirements, to clarify changes in Commission offices or procedures as a result of a reorganization of LP-gas activities among the AFRED, Gas Services, and Safety Divisions, to repeal some unnecessary rules, and to make other substantive and non-substantive amendments. The Commission proposes an effective date of September 1, 2005, for these amendments, new rules, and repeals.

#### *Proposed Nonsubstantive Amendments*

Proposed amendments to certain sections are nonsubstantive and are proposed for clarification. Section 9.1(a)(6) is proposed to be deleted because it refers to Subchapter F regarding NFPA

51; the rules in Subchapter F are proposed for repeal (as discussed later in the preamble). Section 9.1(g) corrects references to NFPA 58.

The proposed amendments in §9.3(13) delete a form that is no longer used and the remaining paragraphs are renumbered.

In §9.9, specific references to AFRED are added; fees are stated to be nonrefundable; and subsection (c)(1) includes new wording stating that if a person's certification expires, that person shall immediately cease performance of any LP-gas activities authorized by the certification. This wording is currently found in §9.7(f) regarding expiration of licenses, and is added in §9.9 to apply to certifications.

Proposed amendments in §9.12(a)(2) add a reference to AFRED and delete the reference to the rules examination fee being on file; that wording is unnecessary because of the options available for exam locations and payments.

In §9.16, several references to the License and Permit Section of the Gas Services Division are added, and two internal procedures are clarified.

Proposed amendments in §§9.18, 9.21, 9.22, 9.26, 9.27, 9.28, 9.37, 9.38, and 9.102 add references to the Gas Services Division, the License and Permit Section of the Gas Services Division, or the Safety Division, as appropriate. The proposed amendments to §9.103 add a reference to the Safety Division and corrects one internal reference to another rule. Proposed amendments in §§9.107, 9.109, 9.110, 9.115, 9.129, 9.141, 9.203, 9.211, add references to the Safety Division. The amendment in §9.303 corrects the title in a reference to 16 TAC Chapter 13, and §9.312 adds a reference to the Safety Division.

#### *Clarifying and Substantive Amendments*

Some sections include more substantive proposed amendments, but the Commission does not consider them to be controversial.

The proposed amendments in §9.6, in conjunction with amendments to §9.13, add references to the License and Permit Section, and in subsection (c)(4) add wording regarding a new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulation. The new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Section as stated more fully in §9.13. The registration fee is \$50 and the renewal fee is \$20 as proposed.

Proposed changes in §9.7 add references to the License and Permit Section, and new wording requiring a 24-hour emergency response telephone number to be included on LPG Form 1; other proposed amendments clarify that certain fees are nonrefundable.

Proposed amendments in §9.8 specify AFRED as the Commission office to receive the LPG Form 16 and clarify that fees are nonrefundable.

In §9.11, references to AFRED are proposed to be added, as is a 10-calendar day period for a licensee to notify AFRED when a previously certified individual is hired; the current rule states this notification shall take place "immediately," which is not defined.

Section 9.13 includes proposed wording for the new registration program with the Texas State Board of Plumbing Examiners and

the Texas Department of Licensing and Regulation. The proposed new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Commission. This program was jointly agreed upon by the Commission and these two agencies as a way to recognize the skills and training of the individuals who perform LP-gas activities, as authorized by the three agencies. Registration with the Commission is an easier and cheaper way for these skilled workers to be recognized by the Commission as performing authorized LP-gas activities without the expense and time required to obtain a Category D license or renewal.

Proposed changes to §9.36 add references to the Safety Division, amend subsection (a)(4) to ensure that damage has not occurred in an incident or accident involving an LP-gas vehicle, and add new subsection (a)(7) requiring the reporting to the Safety Division of any event involving LP-gas which is required to be reported to any other state or federal agency.

In §9.101(a), proposed changes include a new sentence stating that LP-gas systems under the jurisdiction of DOT safety regulations in 49 CFR Parts 192 and 199, and Part 40 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service. In proposed changes to subsection (b)(1), the 10-day period is changed to 30 days for submission of LPG Form 501 and a reference is added to the Gas Services Division. In subsection (b)(2), the resubmission charge is proposed to be changed from \$20 to \$35; because additional time is being given, a higher resubmission fee is warranted. Wording in subsection (g) is proposed to be deleted and moved to new subsection (c)(6) in order to properly place this requirement under the installations with aggregate water capacities of 10,000 gallons or more.

Section 9.114 is proposed for repeal because the odorization reports described in this rule are no longer necessary.

Section 9.126(a)(3) is proposed to be amended to require all appurtenances and equipment placed into LP-gas service to be used and in compliance with any NFPA standard adopted by the Commission. In subsection (c), references to the Safety Division are proposed to be added. Subsection (d) is proposed to be deleted as unnecessary.

In §9.130, the proposed changes include references to the Safety Division added throughout. In subsection (a)(2)(B), the Commission proposes to specify a \$60 fee plus mileage and rate from Austin as set by the official state travel mileage chart for a replacement nameplate; and in subsection (a)(2)(C), to delete a reference to hourly research fees.

Proposed amendments in §9.140 add references to the Safety Division, and in subsection (d)(4) change the word "required" to "permitted" to make this situation permissive. The proposed changes in the table in subsection (g) include one change in row 7, where the words "or storage" are added to the situation where lettering is required for cylinder exchange or storage racks. Proposed new subsection (g)(5) addresses signs for underground containers. In subsection (h)(3)(C), the six-inch-high cement parking wheelstop is proposed to be changed to a four-inch height requirement, and proposed new wording adds that it must be at least 12 inches from the curb; in subsection (h)(3)(E), the 48-inch requirement is proposed to be increased to 60 inches.

Proposed amendments in §9.142 correct references to some sections in NFPA 58.

Section 9.207 is proposed to be repealed because the situation is covered in NFPA 58.

Proposed amendments in §9.208 add references to the License and Permit Section, clarify a specific references to 49 CFR 180.407, and add a reference to 9 CFR Parts 100-185.

Sections 9.501 - 9.503, and §§9.506-9.508 (all of Subchapter F) are proposed to be repealed; these rules concern the adoption by reference of NFPA 51 relating to welding applications. Since the adoption by reference of NFPA 51, the Commission has adopted NFPA 58, which encompasses NFPA 51; therefore, the rules in this subchapter are no longer necessary.

#### *Proposed Substantive and Possibly Controversial Changes*

Section 9.2 includes two proposed new definitions in paragraphs (6) and (50) for "bobtail driver" and "transport driver." The proposed definitions will help differentiate between these types of vehicles, and will assist applicants and certificate holders to know which type of training or continuing education courses they need to complete. The definition of "assistant director" in current paragraph (6) is proposed to be deleted; following the Commission's recent reorganization, this definition is no longer needed. Paragraph (3) contains proposed nonsubstantive corrections to the definition of "AFT materials"; amendments to paragraphs (9) and (21) are proposed for clarification; paragraph (27) proposes a definition for "MPS gas"; the definition is substantively the same as the definition for "MPS gas" currently in §9.502, which is proposed for repeal. The definition for "operations supervisor" (renumbered to be paragraph (30)) as proposed adds the wording "and is authorized by the licensee to implement operational changes." The Commission proposes to add this wording to make clear that an operations supervisor must have the authority over the day-to-day LP-gas activities being supervised without having to obtain the licensee's approval. In the definition of "outlet" (renumbered to be paragraph (31)) the proposed changes attempt to address a situation which has caused confusion in the past over whether an outlet "materially duplicates" the originally-licensed location. The proposed changes will result in more locations being considered outlets; however, the Commission has proposed amendments to §9.17(a)(3) to allow an operations supervisor to supervise multiple outlets in certain situations; the amendments to §9.17 will be discussed in more detail in subsequent paragraphs of the preamble. Other proposed amendments in §9.2 correct references to Commission offices or renumber existing definitions.

Several amendments are proposed in §9.10, Rules Examination. In subsection (a), the Commission proposes that examinations will no longer be offered at the Commission's headquarters building, but rather at the AFRED Training Center, 6506 Bolm Road, Austin, Texas. This location has available free parking, which will assist applicants in arriving on time for exams. The hours that exams will be offered are proposed to be changed slightly to end at 12:00 noon; a Commission employee must be present during examinations, so the noon deadline will allow sufficient time for exam takers to complete the exams and allow Commission staff to perform other required job duties. AFRED recommends that individuals take exams on Tuesdays and Thursdays, which are more efficient for Commission staff. New subsection (a)(1) clarifies when and where exams will be given. Current subsection (a)(1) is proposed to be deleted because it refers to admittance letters, which will no longer be needed. Proposed amendments in subsection (a)(2) add Categories F, G, and J to Categories E and I as those which are required to complete management-level

examinations; new wording clarifies that the E, F, G, I, and J exams are given only in conjunction with those courses, and other exams are given at the AFRED Training Center and other locations statewide. Proposed new subsection (a)(3) requires applicants in categories that require a course of instruction to complete both the course and the required exam before a certification card will be issued. Proposed new subsection (a)(4) allows applicants two years to complete a required course of instruction after passing the management-level rules exam; after two years, the applicant shall reapply as a new applicant. In subsection (a)(5) (renumbered from (a)(3)), proposed amendments clarify that the fees are nonrefundable, add Categories F, G, and J, and correct an internal rule reference.

The Commission proposes several changes in the table in subsection (b). In the first row, the "delivery truck exam" is proposed to be changed to "bobtail" exam to correspond with the new definition in §9.2 for "bobtail driver." The proposed wording also includes the specific activities covered by this course. Current row 6 refers to manufactured housing technician exam and is proposed to be deleted because there is only one individual currently certified in this category, and other examinations are available to cover this little-used category. In the row for "service and installation exam," the Commission proposes to delete the word "entire," which is misleading, and add references to "plus containers and appliances," which is more accurate. In the row for "appliance service and installation exam," Category N is proposed to be added to the list of categories for which this course applies.

In subsection (c), it is proposed that AFRED will notify individuals of scores within 15 days, instead of 30 days. In subsection (d), the Commission proposes that individuals who fail an exam no longer have to request an analysis in writing. Proposed new subsection (c)(3) is added to require individuals to carry their certification cards with them as proof of certification if a Commission employee requests it. Subsection (d)(2) is proposed to be deleted because it refers to admittance letters, which will no longer be used.

In §9.17(a)(1), the Commission proposes to add a reference to the License and Permit Section. In subsection (a)(3), proposed new wording is added in conjunction with the changes to the definition of "outlet" in §9.2 to allow an individual to be operations supervisor "at more than one outlet provided each outlet has a designated LP-gas certified employee who is responsible for the activities at that outlet." This change is proposed for safety reasons: if a Commission inspector finds a safety violation at an outlet, the inspector must be able to immediately locate that certified employee to take the outlet out of service, make repairs, or whatever other action may be necessary to address the safety situation. In subsection (g), Categories F, G, and J are proposed to be added to Categories E and I as those which may receive work experience substitution in certain instances.

Section 9.33, also proposed for repeal, concerns the welding advisory committee, which was formed before the Commission adopted NFPA 51 by reference, currently in Subchapter F. This committee has since disbanded, as its purpose was completed.

New §9.35 is proposed to require licensees to have written safety procedures in place and for their employees to know what these procedures are. The proposed new rule states that each licensee shall maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee shall ensure that all employees are familiar with the procedure and shall authorize employees to implement

the procedure without management oversight. The written procedure shall be available to emergency response agencies as specified in NFPA 58, 3.10.2.1, and as stated in Table 1 of §9.403 of this title.

Proposed amendments in §9.41 clarify the use of pressure tests versus leakage tests or other inspections. The terms "pressure test" and "leakage test" are often used interchangeably; in fact, they are not the same. The Commission requires a pressure test for schools, so clarifying wording is proposed in subsection (b), in (b)(4), (e)(1), and (e)(2). References to the Safety Division are proposed to be added in several places.

Proposed amendments in §9.51 add references to fees being nonrefundable, add references to the License and Permit Section, add Category M to the list of categories requiring training for management-level and certain employee-level certificates, delete a reference to completing any AFT, add references to AFRED, and add Category J as requiring the 16-hour training course.

Proposed amendments in §9.52 also add Category J and Category M as requiring certain training, change the name of "delivery truck employee-level" to "bobtail employee-level," and add recreational vehicle technician employee-level. In subsection (a), proposed new wording addresses the only situation in which a training deadline is extended; an individual cannot retake and pass an examination in order to extend this deadline, but must complete the applicable training class. In subsection (b)(1)(B), proposed new wording states that beginning September 1, 2005, Category M and recreational vehicle technician certificate holders have until May 31, 2006, to complete their initial continuing education requirements. The Commission proposes to add to the list of current certificate holders Category M and the recreational vehicle technician to those certificates who, if the individual holds more than one certification as of February 1, 2001, (the original date of adoption of the continuing education requirements) must complete their continuing education requirement by the deadline assigned for the initial certificate.

The most extensive proposed changes for the training and continuing education requirements are found in the four tables in subsection (g). The changes are addressed narratively as follows.

In Table 1, a date of September 2005 is proposed to be added in the title to show when this table will become effective. Current course 2.2/2.4 is proposed to be changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, 6.1, the 80-hour and 16-hour courses are also proposed to be corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour course, an "x" is proposed to be added in the AFT column to indicate those courses will include AFT. New rows are proposed to be added for new courses 3.3 and 3.8, with an "x" added in the appropriate columns for the categories to which these two new courses apply. A new column is proposed to be added for Category M and an "x" added on the appropriate rows for the courses which apply to this new category. Finally, in the row for course 6.1, the current table shows an "x" only in the column for Category E; in the proposed new table, this course may fulfill the requirements for all the categories.

In Table 2, the September 2005 date is proposed to be added to the title of the table. The title of the "Delivery Truck/Service & Installation" category is proposed to be changed to "Bobtail Service & Installation." Current course 2.2/2.4 is proposed to be

changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, and the 80-hour and 16-hour courses are also proposed to be corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour course, an "x" is proposed to be added in the AFT column to indicate these courses will include AFT. New rows are proposed to be added for new courses 3.3 and 3.8, with an "x" added in the appropriate columns for the categories to which these two new courses apply. A new column is proposed to be added for RV technician, and an "x" added on the appropriate rows for the courses which apply to this new category. With the addition of some new courses, the current courses have proposed slight revisions in who can take those courses to comply with the requirements for their category; in particular, the "x" in the current table is proposed to be deleted for courses 2.1 and 2.2 for "Bobtail" and "Bobtail Service & Installation"; for course 2.3, for "Portable Cylinder Filling;" and for course 3.1, "Bobtail" and "Appliance Service & Installation." In the footnotes on Table 2, the references to "delivery truck" are proposed to be changed to "bobtail," and the specific activities covered by the "Bobtail Driver" certification are proposed to be added.

On Table 3, the September 2005 date is proposed to be added to the title of the table. The Category M column is proposed to be added. The AFT column is proposed to be deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are proposed to be split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are proposed to be corrected. Finally, on the row for CETP 8, the "x" in the column for Category K is proposed to be deleted.

On Table 4, the September 2005 date is proposed to be added to the title of the table. The RV Technician column is proposed to be added. The AFT column is proposed to be deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are proposed to be split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are proposed to be corrected. In the row for CETP 5, this course is proposed to no longer apply to "Portable Cylinder Filling" or "Motor & Mobile Fuel," but to now apply to "Bobtail," "Bobtail Service & Installation," and "Service & Installation." The PERC GAS Check course is proposed to apply to "Bobtail." In the Note for this table, it is proposed that CETP courses 2.4, 3, 3.6, and 3.7 are not accepted by the Commission for continuing education credit. Finally, in footnotes 2 and 3, the references to "delivery truck" are proposed to be changed to "bobtail," and the specific activities covered by the "Bobtail" certification are proposed to be added.

The Commission notes that it has been informed that CETP is in the process of also changing its courses 5, 6, 7, and 8, so other changes to this Table may be necessary in a future rulemaking.

Section 9.53 is proposed to be repealed because it addresses situations where individuals could have received continuing education credit for attendance at previous courses that were held before the Commission's training and continuing education program was adopted. The rule included a four-year window, which has now passed; therefore, the rule is no longer necessary.

Section 9.54 includes mostly nonsubstantive proposed amendments including adding references to AFRED and adding new subsection (a)(1)(C) to address outside instructors for Category M courses.

Amendments in §9.113 proposed to add "gas utilization equipment, and appliances" to the list of other items that must be maintained in "safe" working order. If any of these items is not in safe working order, the Safety Division may require that the installation be removed from service until repairs are made. This proposed amendment addresses situations where an appliance, for example, may be working, but it is not working safely.

Amendments proposed in §9.132 prohibit a licensee from selling an LP-gas container to an unlicensed individual for resale or installation without determining that such container will be installed by a licensee authorized to perform such installation. The Commission proposes to add that LP-gas shall not be sold for resale to an unlicensed individual as well. The Commission views the sale of LP-gas to an unlicensed individual for resale as more of a safety risk than selling a perhaps empty LP-gas container. If an individual is going to sell or resell LP-gas, that individual must be properly licensed by the Commission.

New wording proposed in §9.134 states that a licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division. This is because the Commission must be informed of LP-gas installations that may have been incorrectly or unsafely installed, especially if the Commission would not otherwise be aware of such installations; for example, members of a church may add on to the church building and pipe it to use LP-gas.

In §9.143(a), some NFPA 58 references are proposed to be corrected. An option to allow a back check valve where the flow is into the container only or a back check valve in lieu of the ESV is proposed to be added. The last sentence in subsection (a) before the wording for new paragraph (1) begins is proposed to be deleted, along with the same sentence at the end of subsection (b) before the deleted wording in subsection (b)(1) begins, and this wording is proposed to be added with some clarifications as new subsection (i). In subsection (a), new paragraphs (1) through (5) are proposed to be added; however, for the most part, this wording is not new. It is currently found in subsection (b), but the more accurate placement is under subsection (a). The only proposed changes from the existing paragraphs (1) through (5) are in paragraph (2), where the wording "and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers" is proposed to be added for clarification, and in paragraph (5), where the phrase "interconnected and" is proposed to be added referring to pneumatically-operated internal valves and ESVs being interconnected and incorporated into at least one remote operating system. Also in subsection (a)(1), the 24-inch requirement is changed to 36 inches to comply with NFPA 58. In subsection (b), the existing paragraphs (1) through (5) are proposed to be deleted. In subsection (d)(4), some wording is proposed to be added to address underground or mounded containers, which are beginning to be used in Texas. In (d)(7)(C), proposed wording changes would mean that the top crossmember of a vertical bulkhead is not required to be 28 inches or less above ground level, but rather the height of it shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway. In subsection (e), the distance for the remote emergency shutoff device that is currently between 20 and 100 feet from the ESV is proposed to be changed, effective September 1, 2005, to a minimum of 25 feet to match the requirement in NFPA 58; existing installations may remain at 20 feet.

Some proposed new wording in §9.201 addresses some potentially unsafe situations involving transports. Proposed new subsection (a)(1) states that the transfer of LP-gas from one transport to another shall be permitted only through a hose with a nominal inside diameter of 1 1/4 inch or less and protected by an off-truck remote control shutdown as required in 49 CFR. Proposed new subsection (a)(2) states that an LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from the Safety Division. In subsection (c), a proposed amendment corrects the wording of 49 CFR §177.834(j).

In §9.202, references to the License and Permit Section are proposed to be added. In subsection (c)(5), proposed new subparagraphs (B) and (C) are added to state that the Section shall not issue an LPG Form 4 if the Section does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006, or the Section has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter. This proposed new wording addresses a situation where the Commission may need to inspect the vehicles of a single company with a large number of vehicles; the wording will ensure that all of a company's vehicles are routinely inspected, without adding a harsher requirement that all vehicles must be present at a particular day and time.

Proposed new §9.204 mirrors proposed new §9.113, but is specific to maintenance of vehicles. The wording of the two rules is generally the same and requires that the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances be maintained in safe working order. If any of these items is not in safe working order, the Safety Division may require that the vehicle be immediately removed from LP-gas service until necessary repairs are made.

Amendments proposed in §9.308(a), (b), and (b)(3) clarify that pressure testing and leakage testing shall be performed only by persons properly licensed or certified by the Commission.

Most changes proposed in §9.403 are in the Table, except for new subsection (c), which adds an explanation concerning the errata from NFPA. The proposed changes in the Table are as follows: The current rows for 1.3 and 1.7.40 are proposed to be deleted; 1.3 refers to §9.114, which is proposed to be repealed, and 1.7.40 is unnecessary because it refers to low emission transfer, which is covered in 3.11, which is not adopted. Several changes are proposed in the row for 2.3.3.2(b)(2). In the wording for "2a," the phrase "or a positive shutoff valve in combination with a back flow check valve" is proposed to be added. Also, wording in "b" is proposed to be added back to the Table; it was erroneously deleted during the last amendments to the Table. In the wording for "c," the word "Containers" is proposed to be changed to "Each container" for clarification. Also in "c," the phrase "and retrofitted" is proposed to be changed to "shall be retrofitted" to make the requirement clear. In "c1," the phrase "installed directly into the container" is proposed to be added for clarity and to ensure that the valve is installed in the best place for optimum safety. In "c2," the phrase "as close as practical" is proposed to be deleted and the specific distance of "within four feet" added for clarity; the distance of four feet is reasonable because an ESV for a bulkhead is already required to be installed within four feet of the bulkhead. A new row for 3.2.2.2

is proposed to be added to state that "Exception No. 1 and Exception No. 3" are not adopted. In the row for 3.2.5, for the firm foundation of concrete, masonry, or metal, the word "and" is proposed to be added so that it must also be otherwise firmly secured "against displacement." In the row for 3.2.12.1, the words "on or" are proposed to be added before the February 1, 2001, date in order to encompass the actual date of February 1. In the rows for 3.2.18.1, 3.2.18.2, and 3.2.18.3, the phrase "liquid or vapor service" is proposed to be changed to "liquid and/or vapor service". In the rows for 3.4.2.1, 3.4.2.7, 3.4.4.1(b), and 3.4.9.2, some references to water capacity are proposed to be corrected to "LP-gas capacity." A new row is proposed to be added for 3.10.2.1 which refers to proposed new §9.35, relating to Written Procedures for LP-Gas Leaks. A new row is proposed to be added to not adopt 3.10.2.2, which refers to the fire safety analysis, which the Commission determines is not needed because Commission rules already require redundant safety features. A new row is proposed to be added to indicate that 3.11 is not adopted, and current rows for 3.11.3, 3.11.3.1, 3.11.3.3, 3.11.4.3(c), and 3.11.5 are proposed to be deleted. In the row for 8.2.3(l), the section number is proposed to be corrected to 8.2.3.1(l).

Finally, the six rules in Subchapter F are proposed for repeal. This subchapter adopted by reference NFPA 51 concerning welding activities. Subsequently, the Commission adopted by reference NFPA 58, which encompasses NFPA 51. Therefore, the separate subchapter for NFPA 51 is no longer needed.

Mary McDaniel, Director, Safety Division; Dan Kelly, Director, Alternative Fuels Research and Education Division; and Steve Pitner, Director, Gas Services Division, have determined that for each year of the first five years the proposed amendments to §§9.6, 9.13, 9.52, and 9.130 are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. Regarding §§9.6 and 9.13, the Commission will receive fees from the master/journeyman plumbers and the Class A or B air conditioning and refrigeration contractors for the Category D registration/examination exemption certificate at \$50 for the initial registration and \$20 for renewals. The Commission currently has about 1,100 Category D license exemptions (about 825 master/journeyman plumbers and 275 Class A or B air conditioning and refrigeration contractors), covering about 1,850 individual employees. Current license renewals for Category D are \$70 per year, resulting in the Commission receiving \$77,000 for the license exemption renewals. Those 1,850 individuals currently pay \$20 for their annual renewal. Under the new registration program, the Commission anticipates that many of the 1,100 exemption holders will not renew the Category D licenses at the \$70 renewal, but will take advantage of the less expensive registration of \$50 per individual. The Commission also expects that some of the remaining 26,900 potential registrants will take advantage of this program. This is a voluntary program, so the Commission cannot state exactly how many individuals will participate. This is a less expensive and less time-consuming option than obtaining a Category D license, so presumably, there will be some participation. In the second year the proposed amendments will be in effect, the Commission will need to register about 1,368 additional individuals out of the remaining 26,470 potential registrants to address the negative fiscal impact of \$77,000 due to the difference between the \$50 initial registration and the \$20 renewal fee. In the third through fifth years, the Commission anticipates no negative fiscal impact.



With the proposed amendments in §9.52, new Category M and recreational vehicle technician applicants will be required to attend training and continuing education courses. As of October 2004, Commission records showed there were about 155 Category M licensees and about 182 recreational vehicle technicians.

In §9.130, the specific \$60 nameplate fee will ensure the Commission recovers its costs for these replacements, especially regarding the mileage.

There will be no fiscal implications to the Commission with regard to the remaining amendments, repeals, or new rules; any changes will be handled within current staffing and budget. There are no fiscal implications for local governments.

Ms. McDaniel, Mr. Kelly, and Mr. Pitner have also determined that the public benefit anticipated as a result of the amendments will be increased public health, safety and welfare, and perhaps some decreased regulatory costs associated with some of the changes allowing certain options for LP-gas installations. The Commission finds that allowing the LP-gas industry to conduct business pursuant to national uniform safety standards such as NFPA 58 achieves a reasonable balance between the public interest in having LP-gas, an environmentally-beneficial fuel, widely and continuously available and at lower costs, and the public interest in having LP-gas industry participants comply with comprehensive safety standards. With regard to the proposed amendments in §9.13, the Commission anticipates some communities may have more access to certified LP-gas employees; in addition, the registration program eliminates some duplicative requirements between agencies authorizing LP-gas activities.

There will be some financial impact on LP-gas licensees or other individuals required to comply with some of the proposed amendments. In §9.6 and §9.13, the new \$50 registration and \$20 renewal fees for master/journeyman plumbers and Class A or B air conditioning and refrigeration contractors will affect those individuals wishing to register with the Commission; this is a voluntary registration, but it is less expensive and less time-consuming than obtaining a Category D license. The new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulation for the master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, was jointly agreed to in principle by the Commission and these two agencies as a way to recognize the skills and training of the individuals who perform LP-gas activities, as authorized by the three agencies. Individuals could see a decrease with the new program because the Category D license renewal of \$70 will no longer be required; only the existing \$20 renewal will remain. Licensees with many employees may see a one-time increase to register those employees at \$50 each, but the \$20 renewal will remain thereafter; their costs will vary based on the number of employees. The primary benefit to these licensees will be that they no longer have to comply with the workers' compensation insurance requirements under a Category D license.

In §§9.7, 9.8, and 9.9, the proposed amendments clarify that certain fees are nonrefundable; however, the fee amounts are not proposed to be changed.

In §9.10, Categories F, G, and J are added to the list of license categories for which applicants are required to attend management-level courses and examinations. Applicants for these categories will be required to pay the fees for these and, depending

on where and when a particular course is offered, pay travel expenses. In addition, the Commission is proposing to change the location where examinations are offered from the Commission's headquarters office at 1701 North Congress in Austin, Texas, to the AFRED training center at 6506 Bolm Road in Austin. The AFRED training center has free parking, so examinees will not be required to find and pay for metered parking as they now do at the 1701 North Congress location.

In §9.17(a)(3), proposed amendments will require an LP-gas certified employee at each outlet of any licensee; this amendment is in conjunction with the proposed change to allow operations supervisors to supervise more than one outlet. The amendments in subsection (a)(3) do not specify what kind of LP-gas certification the employee must have, but presumably it will be a less expensive certification than a management-level certification required for an operations supervisor. The amendment clarifies that there does not have to be an operations supervisor (i.e., a management-level employee) at each outlet, so there is a potential savings for a management-level certification, examination, training, and continuing education. Many licensees may need to have some employees become certified in order to comply with this rule. The Commission does not have records on exactly how many outlets a licensee has, nor how many employees or whether those employees are LP-gas certified or not.

Proposed new §9.35 requiring a written plan to handle LP-gas leaks may require some costs for producing the written plan, if a licensee does not already have one, and making it available to all employees; however, this cost should be negligible.

The proposed amendments in §9.41 specify that a pressure test must be performed on schools. This was always the Commission's intent; however, the rule wording used the term "leakage test" or "other inspection," which were not accurate. A pressure test is a more expensive test that provides more specific results than a leakage test; school districts that have been using a leakage test must now use a pressure test. The Commission does not have any information on how many or which school districts would be affected by this proposed change.

In §9.51(b)(1) and (f)(2), Category M is proposed to be added to the list of categories requiring training for new applicants, and Category J is proposed to be required to attend the 16-hour management-level course. Depending on which course these applicants choose to attend, there may be travel costs involved.

In §9.52, the Commission proposes to add Category M to the management-level and recreational vehicle technicians to the employee-level training and continuing education requirements. Beginning September 1, 2005, these groups have until May 31, 2006, to complete this requirement.

In §9.54, Category M certificate holders are proposed to be allowed to become outside instructors; this is voluntary but the nonrefundable application fee is \$300 per course and renewal is \$150.

In §9.101, the resubmission fee is proposed to be changed from \$20 to \$35, but the time period is also proposed to be changed from 10 days to 30 days; individuals can avoid this fee by filing timely and correctly.

In §9.113 and §9.204, the proposals with respect to required repairs may result in costs to licensees or consumers, but the Commission cannot state if these will be needed or what the exact costs would be.

In §9.130, the nameplate cost is \$60 plus mileage and per diem; the hourly research charge is proposed to be deleted. The charge will ensure the Commission recoups its costs (especially with regard to mileage) for nameplate replacements, but the specific amounts will also allow Commission staff to give accurate costs to individuals requesting replacements.

In §9.134, proposed new wording requires a licensee to perform a pressure test, verify that piping is installed in accordance with the LP-Gas Safety Rules, tag the installation, and file LPG Form 22. The pressure test will result in some costs to licensees or consumers, but the Commission cannot determine exactly how much that would be.

In §9.140, in row 7 of the Table, storage racks are proposed to be added to cylinder exchange racks as being required to post a certain sign. Persons with storage racks will incur a small cost for producing a sign for each storage rack. Also, in subsection (g)(5), persons with underground LP-gas installations will be required to install signs, which should be a negligible one-time cost.

In §9.143(a), a back check valve is proposed to be added as an option, and in subsection (d)(4), underground or mounded containers are proposed to be required to have bulkheads.

In §9.201, it is proposed that licensees who have routinely or even occasionally used LP-gas transports for storage will have to obtain prior approval from the Commission to operate in this manner. The Commission sees the use of LP-gas transports in this manner as potentially unsafe because they do not usually include all the redundant safety features required of stationary LP-gas installations. This proposed prohibition could mean that licensees that have been operating in this manner would experience a loss of income or a cost to obtain stationary storage facilities, or both, but the Commission does not have information about how many licensees would be affected.

As proposed in §9.202(c)(5)(B) and (C), each and every transport will have to be inspected by a Commission employee at least once every four years or the Form 4 will not be issued. This may cause some licensee to be unable to operate a transport that does not meet the deadline, but licensees can avoid the potential loss by timely inspection of transports.

Pursuant to Texas Government Code, §2006.002(c), the Commission cannot determine the cost of compliance for individual, small business, or micro-business LP-gas businesses, because under the proposed amendments, operating an LP-gas business is voluntary, not mandatory. In addition, some aspects of safety compliance are mandatory, but the costs will vary for each licensee and certificate holder based on individual circumstances and choices. The Commission assumes that there are LP-gas businesses that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for any LP-gas business. In addition, the costs for any particular LP-gas business will vary based on that business' situation. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Further, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering that the purpose of Texas Natural Resources Code, Chapter 113, is to ensure the safe use of LP-gas, it is not feasible to reduce any adverse effect the proposed

amendments could have on individuals, small businesses, or micro-businesses based on the size of the business.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 60 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Richard Gilbert at (512) 463-6935. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

## SUBCHAPTER A. GENERAL REQUIREMENTS

### 16 TAC §§9.1 - 9.3, 9.6 - 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.35 - 9.38, 9.41, 9.51, 9.52, 9.54

The amendments and new rule are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

#### §9.1. Application of Rules, Severability, and Retroactivity.

(a) The LP-Gas Safety Rules apply to the location and operation of liquefied petroleum gas systems, equipment, and appliances. These standards also apply to truck and railcar loading racks, but do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railcar loading racks used in connection with these excluded establishments.

(1) - (5) (No change.)

~~[(6) Subchapter F, Adoption by Reference of NFPA 51 (Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes), applies to the use of LP-gas as a welding fuel.]~~

(b) - (f) (No change.)

(g) Vehicles and fuel supply containers excluded from the requirements of this chapter pursuant to subsection (f) of this section shall comply with the requirements of §9.203 of this title, relating to School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections, and the Commission's exception to NFPA 58 §8.2.3(l) [§8.2.3-1(k)] in Table 1 in §9.403(a), relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

## §9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) AFT materials--The portion of a Commission training module ~~[manual]~~ consisting of the four sections of the Railroad Commission's LP-Gas ~~[Employee]~~ Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer ~~[Commission Record and Employer]~~ Record.

(4) - (5) (No change.)

(6) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

~~[(6) Assistant director--The assistant director of the LP-Gas Safety Section who is the Commission's delegate responsible for the enforcement of the LP-Gas Safety Rules and the Texas Natural Resources Code.]~~

(7) - (8) (No change.)

(9) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee; or

(B) (No change.)

(C) who has passed the required ~~[management-level qualification examination or]~~ employee-level qualification examination, has paid the applicable fee, and is required to comply with a training ~~[or continuing education]~~ requirement as specified in §9.52 of this title (relating to Training and Continuing Education Courses).

(10) - (20) (No change.)

(21) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(22) - (26) (No change.)

(27) MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(28) ~~[(27)]~~ Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(29) ~~[(28)]~~ Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(30) ~~[(29)]~~ Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

~~(31) [(30)]~~ Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed [at which the business conducted materially duplicates the operations for which the licensee is initially granted a license].

(32) ~~[(31)]~~ Outside instructor--An individual, other than a Commission employee, approved by AFRED ~~[the Commission]~~ to teach certain LP-gas training or continuing education courses.

(33) ~~[(32)]~~ Person--An individual, partnership, firm, corporation, joint ventureship, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(34) ~~[(33)]~~ Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(35) ~~[(34)]~~ Property line--The boundary which designates the point at which one real property interest ends and another begins.

(36) ~~[(35)]~~ Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(37) ~~[(36)]~~ Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(38) ~~[(37)]~~ Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(39) ~~[(38)]~~ Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(40) ~~[(39)]~~ School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(41) ~~[(40)]~~ School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(42) ~~[(41)]~~ Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(43) ~~[(42)]~~ Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(44) ~~[(43)]~~ Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(45) ~~[(44)]~~ Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(46) ~~[(45)]~~ Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(47) [(46)] Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(48) [(47)] Transfer system--All piping, fittings, valves, and equipment utilized in dispensing LP-gas between containers.

(49) [(48)] Transport--Any bobtail or semitrailer equipped with one or more containers.

(50) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(51) [(49)] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(52) [(50)] Ultimate consumer--The individual controlling LP-gas immediately prior to its ignition.

### §9.3. *LP-Gas Report Forms.*

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms [for use by the LP-Gas Safety Section of the Gas Services Division].

(1) - (12) (No change.)

[(13) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases.]

(13) [(14)] LPG Form 18. Statement of Lost or Destroyed License.

(14) [(15)] LPG Form 18B. Statement of Lost or Destroyed LPG Form 4.

(15) [(16)] LPG Form 19. Inventory of LP-Gas Storage Facility.

(16) [(17)] LPG Form 20. Report of LP-Gas Incident/Accident.

(17) [(18)] LPG Form 21. Notice of Intent to Appear.

(18) [(19)] LPG Form 22. Report of LP-Gas Safety Rule Violations.

(19) [(20)] LPG Form 23. Statement in Lieu of Container Testing.

(20) [(21)] LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules.

(21) [(22)] LPG Form 26. Franchise Tax Certification.

(22) [(23)] LPG Form 28. Notice of Election to Self-Insure Per Rule 9.26.

(23) [(24)] LPG Form 28A. Bank Declarations Regarding Irrevocable Letter of Credit.

(24) [(25)] LPG Form 500. Application for Installation.

(25) [(26)] LPG Form 500A. Notice of Proposed LP-Gas Installation.

(26) [(27)] LPG Form 501. Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.

(27) [(28)] LPG Form 502. Request for Commission Identification Nameplate.

(28) [(29)] LPG Form 503. Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles.

(29) [(30)] LPG Form 505. Testing Procedures Certification for Category B and O Licenses.

(30) [(31)] LPG Form 506. Polyethylene Pipe/Tubing Heat-Fusion Certification.

(31) [(32)] LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(32) [(33)] LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.

(33) [(34)] LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(34) [(35)] LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(35) [(36)] LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(36) [(37)] LPG Form 998A. Certificate of Insurance, General Liability.

(37) [(38)] LPG Form 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.

(38) [(39)] LPG Form 999. Notice of Insurance Cancellation.

### §9.6. *Licenses and Fees.*

(a) A prospective licensee may apply to the License and Permit Section of the Gas Services Division (the Section), [Commission] for one or more licenses specified in subsection (c)(1) - (16) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of licensing or renewal.

(b) (No change.)

(c) The license categories and fees are as follows.

(1) - (3) (No change.)

(4) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing. The original license fee is \$100; the renewal fee is \$70. Additionally, master or journeyman plumbers who are licensed by the Texas State Board of Plumbing Examiners or persons who are licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with the Section as described in §9.13 of this title (relating to General Installers and Repairman Exemption). The initial registration fee is \$50; the registration renewal fee is \$20.

(5) - (16) (No change.)

### §9.7. *Application for License and License Renewal Requirements.*

(a) - (c) (No change.)

(d) An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section) [~~Commission~~]:

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section [~~Commission~~]; and

(2) (No change.)

(3) pay the following fees:

(A) - (B) (No change.)

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(e) (No change.)

(f) For license renewals, the Section [~~Commission~~] shall notify the licensee in writing at the address on file with the Section [~~Commission~~] of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, 7, and 26, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section [~~Commission~~] with any necessary changes clearly marked on the forms, including on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section [~~Commission~~] shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of the renewal fee, the Section [~~Commission~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section [~~Commission~~] shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section [~~Commission~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section [~~Commission~~] shall renew the license, and the person may resume LP-gas related activities.

(3) (No change.)

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section [~~Commission~~] a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) - (B) (No change.)

(g) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section [~~Commission~~] for each of its outlets legible copies of:

(A) - (B) (No change.)

(2) An applicant for a Category B or O license or renewal shall file with the Section [~~Commission~~] a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section [~~Commission~~] a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

#### §9.8. *Application for a New Certificate.*

(a) An applicant for a new certificate shall:

(1) file with AFRED [~~the Commission~~] a properly completed LPG Form 16 and the applicable nonrefundable rules examination fee specified in §9.10 of this title (relating to Rules Examination);

(2) - (3) (No change.)

(b) (No change.)

#### §9.9. *Requirements for Certificate Renewal.*

(a) (No change.)

(b) Certificate renewal date. AFRED [~~The Commission~~] shall notify licensees of any of their employees' pending renewals and [~~or~~] shall notify the individual if not employed by a licensee, in writing, at the address on file with AFRED [~~the Commission~~] no later than March 15 of a year for the May 31 renewal date of that year.

(c) Certificate holders shall remit [~~pay~~] the nonrefundable \$35 annual certificate renewal fee to AFRED [~~the Commission~~] on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee. An employee of a state agency, county, municipality, school district, or other governmental subdivision is not required to pay the annual certificate renewal fee.

(1) Failure to pay the nonrefundable annual renewal fee by the deadline shall result in a lapsed certification. To renew a lapsed certification, the individual shall pay the nonrefundable \$35 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate. If a person's certification expires, that person shall immediately cease performance of any LP-gas activities authorized by the certification. If an individual's certificate has been expired for more than two years from May 31 of the year in which certification lapsed, that individual shall comply with the requirements for a new certificate.

(2) Upon receipt of the annual renewal fee and any late-filing penalty, AFRED [the Commission] shall verify that the individual's certification has not been suspended, revoked, or expired for more than two years. After verification, AFRED [the Commission] shall renew the certification and the individual may continue or resume LP-gas activities authorized by that certification.

(d) Continuing education. Certificate holders shall successfully complete the continuing education requirements as specified in §9.51 and §9.52 [§§9.51 - 9.53] of this title (relating to General Requirements for Training and Continuing Education, and ~~[:] Training and Continuing Education Courses[; and Continuing Education Credit for Previous Courses]~~).

(1) - (2) (No change.)

#### §9.10. Rules Examination.

(a) An individual who files [has filed] LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, [Austin office] between the hours of 8:00 a.m. and 12:00 noon ~~[2:00 p.m.]~~, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.

~~[(1) Applicants who wish to take the rules examination at sites other than the Austin office shall submit LPG Form 16 and the applicable fee to the Commission's Austin office at least three business days prior to the examination date in order to receive an admittance letter from the Commission. The admittance letter shall be required at all exam sites other than the Austin office.]~~

(2) The Category E, F, G, I, and J ~~[E and I]~~ management-level rules examination shall ~~[also]~~ be administered only [offered] in conjunction with the Category E, F, G, I, and J management-level courses of instruction ~~[E and I training courses]~~. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(3) The Commission may not issue a certification card to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(4) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

(5) ~~[(3)]~~ Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is \$50.

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is \$20.

(C) The nonrefundable examination fee shall be paid each time an individual wishes to take the examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J ~~[E or I]~~ training course as specified in §9.51(f)(2)(A) [§9.51(e)(2)(A)] of this title (relating to General Requirements for Training and Continuing Education) shall pay the charge specified for the applicable examination.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.  
Figure: 16 TAC §9.10(b)

(c) Within 15 calendar ~~[30]~~ days of the date an individual takes an examination, AFRED [the Commission] shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFRED [the Commission] shall notify the individual of the examination results within 14 days of the date AFRED [the Commission] receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED [the Commission] shall notify the individual of the reason for the delay before the 90th day. AFRED [The Commission] may require a testing service to notify an individual of the individual's examination results.

(2) (No change.)

(3) An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested ~~[in writing]~~ by an individual who failed the examination, AFRED [the Commission] shall furnish the individual with an analysis of the individual's performance on the examination.

(1) Any individual who fails an examination administered by the Commission only at the Austin location may retake the same examination only one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee.

~~[(2) Any individual who fails an examination administered at a location other than the Austin location shall reapply to the Austin office for a new admittance letter.]~~

#### §9.11. Previously Certified Individuals.

(a) A licensee shall notify AFRED [the Commission] when a previously certified individual is hired by ~~[immediately]~~ filing LPG Form 16A and a nonrefundable \$10 fee with AFRED within 10 calendar days ~~[the Commission]~~, or in lieu of that form, the \$10 fee and a written notice including the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, names of the newly-hired certified employee's previous and new employers, and types of LP-gas work to be performed by the newly-hired certified employee.

(b) (No change.)

#### §9.12. Trainees.

(a) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without

that individual having successfully completed the rules examination as specified in §9.10 of this title (relating to Rules Examination) subject to the following conditions.

(1) (No change.)

(2) The licensee or ultimate consumer shall ensure that LPG Form 16 [and the applicable rules examination fee] is on file with AFRED [the Commission] for each trainee at the time that the trainee begins supervised LP-gas activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.

(b) - (d) (No change.)

#### §9.13. General Installers and Repairman Exemption.

(a) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with the License and Permit Section of the Gas Services Division (the Section) and be granted an exemption to the Category D licensing and examination requirements (including insurance, and training and continuing education) provided the applicant:

(1) holds an active license in compliance with Texas Occupations Code, §1302.260, relating to Issuance and Term of License, and §1301.351, relating to License, Endorsement, or Registration Required;

(2) submits a legible photocopy of a current Air Conditioning and Refrigeration Contractor or Master or Journeyman Plumbers certificate;

(3) submits a legible photocopy of a picture state-issued identification card or driver's license;

(4) submits a properly completed LPG Form 16B; and

(5) pays the \$50 registration fee.

~~[(a) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D management-level rules examination and any service and installation employee-level rules examination for Categories D, E, K, or N only by submitting to the Commission the following:]~~

~~[(1) LPG Form 16B;]~~

~~[(2) a \$30 original filing fee; and]~~

~~[(3) any information the Commission may reasonably require.]~~

(b) This exemption does not become effective until the registration/examination exemption certificate [examination exemption card] is issued by the Section [Commission].

~~[(c) An individual who holds a general installers and repairmen exemption shall not perform LP-gas related activities unless:]~~

~~[(1) that individual works for a properly licensed Category D, E, K, or N licensee;]~~

~~[(2) the individual successfully completes the applicable employee-level rules examination and training or continuing education required to work for a licensee in a category other than D, E, K, or N; or]~~

~~[(3) the individual successfully completes the rules examination and any training or continuing education requirements for a category of license other than Category D, E, K, or N.]~~

(c) ~~[(d)]~~ The registration/examination [examination] exemption accrues to the individual and is nontransferable.

(d) ~~[(e)]~~ Any individual granted such exemption shall maintain registered [certified] status at all times. Upon failure to maintain registered [certified] status, the individual shall immediately cease all affected LP-gas activities until proper status has been regained.

(e) ~~[(f)]~~ In order to maintain an exemption, each individual issued a registration/examination exemption certificate [an examination exemption card] shall pay a \$20 annual renewal fee to the Section [Commission] on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease all LP-gas activities until the exemption has been renewed. To renew a lapsed exemption, the applicant shall pay the \$20 annual renewal fee plus a \$20 late-filing fee. Failure to do so shall result in the expiration of the registration/examination [examination] exemption. If an individual's registration/examination [examination] exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new exemption.

~~[(g) Each applicant for exemption who plans to substitute an individual as noted in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors) for its company representative or operations supervisor may do so provided that individual complies with all of the other requirements.]~~

(f) ~~[(h)]~~ Any individual who is issued this exemption agrees to comply with the current edition of the LP-Gas Safety Rules. In the event the exempt individual surrenders, fails to renew, or has the license revoked either by the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation, that individual shall immediately cease performing any LP-gas activities granted by this section. The [examination] exemption certificate [card] shall be returned immediately to the Section [Commission] and all rights and privileges surrendered.

#### §9.16. Hearings for Denial, Suspension, or Revocation of Licenses or Certificates.

(a) The Commission may deny, suspend, or revoke a license or certificate for any individual who fails to comply with the LP-Gas Safety Rules.

(1) (No change.)

(2) If a person resubmits the application for license or license renewal within 30 calendar days of receipt of the denial with all deficiencies corrected, the License and Permit Section of the Gas Services Division (the Section) [Commission] shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing shall be in writing, shall refer to the specific requirements the applicant claims were met, and shall be submitted to the Section [Commission] within 30 calendar days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, the Section [Commission] shall forward the request for a hearing to the Office of General Counsel for the purpose of scheduling [schedule] a hearing within 30 calendar days following the receipt

of the request for hearing to determine the applicant's compliance or noncompliance with the licensing requirements for the category or categories of license sought.

(3) - (4) (No change.)

(c) Suspension or revocation of licenses or certifications.

(1) If the Section or the Safety Division (the Division) [~~Commission~~] finds by means including but not limited to inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with the Texas Natural Resources Code, Chapter 113, or the LP-Gas Safety Rules, the Section or the Division [~~Commission~~] shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee or certified person receives the notice by which the violation or noncompliance shall be corrected or discontinued. If the Section or the Division [~~Commission~~] determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, the Section or the Division [~~Commission~~] may notify the licensee or certified person orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, the Section or the Division [~~Commission~~] shall follow it with written notification no later than five business days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or shall request an extension of time in which to comply. The request for extension of the time to comply shall be received by the Section or the Division [~~Commission~~] within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified person disagrees with the determination of the Section or the Division [~~Commission~~] under this section, that person may request a public hearing on the matter to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the LP-Gas Safety Rules. The request shall be in writing, shall refer to the specific rules or statutes the licensee or certified person claims to have complied with, and shall be received by the Section or the Division [~~Commission~~] within 30 calendar days of the licensee's or certified person's receipt of the notice of violation or noncompliance. The Section or Division shall forward the request for hearing to the Office of General Counsel.

(2) If the Section or the Division [~~Commission~~] determines that the licensee or certified person may not comply within the specified time, the Section or the Division [~~Commission~~] may call a public hearing to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and any other applicable rules.

#### *§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.*

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with the License and Permit Section of the Gas Services

Division (the Section) [~~Commission~~] designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

(2) A licensee may have more than one company representative.

(3) An individual may [~~shall~~] be operations supervisor at more than one outlet provided each outlet has a designated LP-gas certified employee who is responsible for the activities at that outlet [~~only one outlet~~].

(4) (No change.)

(5) A licensee shall immediately notify the Section [~~Commission~~] in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (g) [(f)] of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (g) [(f)] of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) - (4) (No change.)

(5) comply with the work experience or training requirements in subsection (g) [(e)] of this section, if applicable;

(6) (No change.)

(7) submit any additional information as deemed necessary by the Section [~~Commission~~].

(c) - (f) (No change.)

(g) Work experience substitution for Category E, F, G, I, and J [~~E and I~~]. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J [~~E or I~~] company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J [~~E or I~~] training course, or one agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and



Continuing Education Courses) prior to the Section ~~[Commission]~~ issuing a certificate.

**§9.18. Reciprocal Examination Agreements with Other States.**

(a) The Alternative Fuels Research and Education Division (AFRED) ~~[Commission]~~ may accept the examination requirements for LP-gas transport drivers from other states provided that the qualifying state has entered into a reciprocal agreement with Texas as specified in this section.

(b) A state that is interested in a reciprocal agreement with Texas shall provide a copy of its examination used to qualify transport drivers to AFRED ~~[the Commission]~~. AFRED ~~[The Commission]~~ shall provide a copy of the Texas examination to the other state's LP-gas authority. The states shall review the materials to ensure that they contain substantially equivalent requirements. If each state accepts the requirements of the other state, both states shall sign the reciprocal agreement.

(1) The reciprocal agreement shall be in the form of a letter on the official letterhead of the state requesting the reciprocal agreement. The letter shall be signed and dated by an official representative of the LP-gas authority in both states. For Texas, the official representative shall be the AFRED ~~[assistant]~~ director or the ~~[assistant]~~ director's delegate.

(2) - (3) (No change.)

(4) AFRED ~~[The Commission]~~ shall maintain a current list of all states participating in reciprocal agreements, a list of participating states' applicable fees, and a list of all individuals who have received a reciprocal examination exemption.

(5) (No change.)

(c) Individuals who apply for a reciprocal examination exemption shall pay the applicable fees required by each state in exchange for exemption from examination requirements.

(1) Individuals from other participating states shall remit ~~[pay]~~ to AFRED ~~[the Commission]~~ the nonrefundable employee-level rules examination fee and the annual certificate renewal fee specified in §9.10 and §9.9 of this title (relating to Rules Examination, and Requirements for Certificate Renewal, respectively).

(2) (No change.)

(d) Applicants for a reciprocal examination exemption shall provide the following information to AFRED ~~[the Commission]~~ to verify that they are properly and currently certified in their state:

(1) (No change.)

(2) LPG Form 16R. Applicants from other states shall provide their Social Security numbers to AFRED ~~[the Commission]~~ for purposes of record-keeping and to comply with the requirements in Texas Family Code Annotated §231.302(c) (Vernon 1996), which mandates disclosure of Social Security numbers by applicants to assist in the administration of laws relating to child support. Social Security numbers are subject to or excepted from disclosure to the public in accordance with Texas Government Code, Chapter 552.

(3) Texas applicants shall provide copies of their AFRED-issued ~~[Commission-issued]~~ wallet certification cards showing their annual certification as their written proof when applying to other states for reciprocal examination exemptions.

(e) - (f) (No change.)

(g) Upon the effective date of this section, AFRED ~~[the Commission]~~ may issue reciprocal examination exemptions only for LP-gas transport driver examinations. For purposes of reciprocal agreements,

a "transport" is defined as a cargo tank motor vehicle of more than 5,000 gallons water capacity ~~[semitrailer]~~.

**§9.21. Franchise Tax Certification and Assumed Name Certificates.**

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall file LPG Form 26 with the License and Permit Section of the Gas Services Division (the Section), ~~[Commission]~~ prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the Office of the Comptroller of Public Accounts with the Section ~~[Commission]~~ as an alternative to filing the LPG Form 26.

(b) All applicants for license shall list on LPG Form 1 all names under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the secretary of state's office with the Section ~~[Commission]~~.

**§9.22. Changes in Ownership, Form of Dealership, or Name of Dealership.**

(a) Changes in ownership which require a new license.

(1) Transfer of dealership or outlet by sale, lease, or gift. The purchaser, lessee, or donee of any dealership or outlet shall have a current and valid license authorizing the LP-gas activities to be performed at the dealership or outlet or shall apply for and be issued an LP-gas license prior to engaging in any LP-gas activities which require a license. The purchaser, lessee, or donee shall notify the License and Permit Section of the Gas Services Division (the Section) ~~[Commission]~~ by filing a properly completed LPG Form 1 prior to engaging in any LP-gas activities at that dealership or outlet which require an LP-gas license.

(2) Other changes in ownership. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, or the dissolution of a corporation or partnership, or any change in members of a partnership, or other change in ownership not specifically provided for in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify the Section ~~[Commission]~~ in writing and shall immediately cease all LP-gas activities of the previously existing dealership which require an LP-gas license and shall not resume until the Section ~~[Commission]~~ issues an LP-gas license to the successor in interest.

(b) Change in dealership business entity. When a dealership converts from one business entity into a different kind of business entity, the resulting entity shall have a current and valid license authorizing the LP-gas activities to be performed or shall apply for and be issued a license before engaging in any LP-gas activities which require an LP-gas license and shall immediately notify the Section ~~[Commission]~~ in writing of the change in business entity.

(c) Dealership name change. A licensee which changes its name shall not be required to obtain a new license but shall immediately notify the Section ~~[Commission]~~ as follows prior to engaging in any LP-gas activities under the new name. The licensee shall file:

(1) - (3) (No change.)

(4) an amended LPG Form 7 to transfer any LP-gas transport or container delivery unit, including any fees specified in §9.202 of this title (relating to Registration and ~~[or]~~ Transfer of LP-Gas Transports or Container Delivery Units); and

(5) an amended LPG Form 19, if applicable, to specify storage container inventory.

(d) (No change.)

(e) In the event of a death of a sole proprietor or partner, the assistant director for the Section [~~Commission~~] may grant a temporary exception not to exceed 30 calendar days to the examination requirement for company representatives and operations supervisors. An applicant for a temporary exception shall agree to comply with all applicable safety requirements.

*§9.26. Insurance and Self-Insurance Requirements.*

(a) LP-gas licensees or applicants for license shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (j) of this section. Before the License and Permit Section of the Gas Services Division (the Section) [~~Commission~~] grants or renews a license, an applicant shall submit either:

Figure: 16 TAC §9.26(a) (No change.)

(1) - (2) (No change.)

(b) Certificates of insurance filed with the Section [~~Commission~~] shall have one of the endorsements specified in Table 1 of this section attached to the policy, and the endorsements shall not be canceled without cancellation of the policy to which they are attached.

(c) Each endorsement issued and attached to a certificate of insurance requires the insurance carrier, noted as "company" on the certificate of insurance, to give the Section [~~Commission~~] written notice 30 calendar days before the insurance cancellation. The 30-day notice commences to run from the date the notice is actually received by the Section [~~Commission~~].

(d) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employer's liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for license shall file the required insurance certificate with the Section [~~Commission~~] before hiring any person as a dealership employee.

(e) A licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance certificate with the Section [~~Commission~~] before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(f) A licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a certificate of completed operations and/or products liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section [~~Commission~~] before engaging in any operations that require completed operations and/or products liability insurance.

(g) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section

[~~Commission~~] before engaging in any operations that require general liability insurance.

(h) (No change.)

(i) A state agency or institution, county, municipality, school district, or other governmental subdivision shall meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance by filing LPG Form 995 with the Section [~~Commission~~] as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §113.097.

(j) Self-insurance requirements.

(1) (No change.)

(2) A licensee or license applicant desiring to self-insure shall file with the Section [~~Commission~~] a properly completed LPG Form 28, Notice of Election to Self-Insure Per Rule 9.26 (created 11/02) and a properly completed LPG Form 28-A, Bank Declarations Regarding Irrevocable Letter of Credit (created 11/02). The licensee or license applicant shall attach to the LPG Form 28-A any documentation necessary to show that the bank issuing the irrevocable letter of credit meets the requirements in paragraph (5)(E) of this subsection.

(3) - (5) (No change.)

(6) Within 30 days of the occurrence of any incident or accident involving the business activities of a self-insured LP-gas licensee that results in property damage or loss and/or personal injuries, the licensee shall notify the Railroad Commission, Safety Division, [~~Gas Services Division; LP-Gas Section~~], in writing of the incident. The licensee shall include in the notification a list of the names and addresses of any individuals known to the licensee who may have suffered losses in the incident. The licensee shall also provide written notice to all such individuals of the licensee's status as being self-insured and of the expiration date of the licensee's letter of credit.

*§9.27. Application for an Exception to a Safety Rule.*

(a) A person may apply for an exception to the provisions of this chapter by filing LPG Form 25 along with supporting documentation, and a \$50 filing fee with the Safety Division (the Division) [~~Commission~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and any information which may assist the Division [~~Commission~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of LPG Form 25 by certified mail, return receipt requested, or otherwise delivered to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form or application is filed with or sent to the Division [~~Commission~~]. The applicant shall include a notice to the affected entities that any objection shall be filed with the Division [~~Commission~~] within 18 calendar days of postmark or other delivery of the application. The applicant shall file all return receipts with the Division [~~Commission~~] as proof of notice.

(2) - (3) (No change.)

(4) The Division [~~Commission~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2)

and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed at the Division [~~Commission~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect of public health, safety, or welfare. The Commission may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) The Division [~~Commission~~] shall review the application within 21 business days of receipt of the application. If the Division [~~Commission~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the director of the [~~Gas Services~~] Division or the director's delegate may administratively grant the exception if the director determines that the installation, as proposed, does not adversely affect the health or safety of the public. The Division [~~Commission~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. The Division [~~Commission~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the director of the [~~Gas Services~~] Division or the director's delegate denies the exception, the Division [~~Commission~~] shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when the Division [~~Commission~~] receives an objection as set out in subsection (d) from any affected entity, or when the applicant requests one following an administrative denial. The Division [~~Commission~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the LP-Gas Safety Rules.

(g) - (h) (No change.)

(i) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by the Division [~~Commission~~] of an incomplete request. The applicant may resubmit an application request.

#### §9.28. Reasonable Safety Provisions.

If an LP-gas stationary installation, equipment, or appurtenances not specifically covered by the LP-Gas Safety Rules has been or will be installed, the Safety Division [~~Commission~~] shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with the Division's [~~Commission's~~] determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Commission has determined that the installation is safe for LP-gas service.

#### §9.35. Written Procedure for LP-Gas Leaks.

Each licensee shall maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee shall ensure that all employees are familiar with the procedure and shall authorize employees to implement the procedure without management oversight. The written procedure shall be available to emergency response agencies as specified in NFPA 58, §3.10.2.1, and as stated in Table 1 of §9.403 of this title, (relating to Sections in NFPA

58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections).

#### §9.36. Report of LP-Gas Incident/Accident.

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing the equipment of an installation shall notify the Safety Division [~~Commission~~] by telephone of any event involving LP-gas which:

(1) - (3) (No change.)

(4) involved [~~damage to~~] the LP-gas installation on any vehicle propelled by or transporting LP-gas; or

(5) (No change.)

(6) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest even though it does not meet paragraphs (1) - (5) of this subsection; or [-]

(7) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or the United States Department of Transportation).

(b) (No change.)

(c) Following the initial telephone report, the LP-gas licensee who made the telephone report shall submit a properly completed LPG Form 20 to the Division [~~Commission~~]. The report shall be postmarked within 14 calendar days of the date of initial notification to the Division [~~Commission~~], or within five business days of receipt of the fire department's report, whichever occurs first, unless the Division [~~Commission~~] grants authorization for a longer period of time when additional investigation or information is necessary.

(d) Within five business days of receipt, the Division [~~Commission~~] shall review LPG Form 20 and notify in writing the person submitting the LPG Form 20 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LP-gas activities at the involved location.

(e) In the case of an accident or incident at a Category P licensee's location, the Category P licensee shall immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee and the Category E, J, or other licensee shall be responsible for making the accident or incident report to the Division [~~Commission~~] as specified in this section.

#### §9.37. Termination of LP-Gas Service.

(a) If the Safety Division (the Division) [~~Commission~~] determines that any LP-gas container or installation constitutes an immediate danger to the public health, safety, and welfare, the Division [~~Commission~~] shall require the immediate removal of liquid and vapor LP-gas and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include appliances, equipment, or any part of the system including the servicing container. A warning tag shall be installed by the Division [~~Commission~~] until the unsafe condition is remedied. Once corrected, the tag shall be removed by the Division [~~Commission~~].

(b) If the Division [~~Commission~~] determines that any LP-gas container or installation does not comply with the Texas Natural Resources Code, Chapter 113, or the LP-Gas Safety Rules, but does not constitute an immediate danger to the public health, safety, and welfare, the Division [~~Commission~~] shall take action to ensure that the container or installation comes into compliance as soon as practicable. Division [~~Commission~~] action may include the placement of a warning tag. Once the container or installation complies with Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, the Division [~~Commission~~] may remove or delegate the removal of the warning tag.

(c) If the affected entity disagrees with the removal from service and/or placement of a warning tag, the entity may request a review of the Division's ~~Commission's~~ decision within 10 calendar days. The Division ~~Commission~~ shall notify such entity of its finding, in writing, stating the deficiencies, within 10 business days. If the entity disagrees, the entity may request or the Division ~~Commission~~ on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered by the Commission.

*§9.38. Reporting Unsafe LP-Gas Activities.*

(a) A person may report any unsafe or noncompliant LP-gas activities to the Safety Division (the Division) ~~Commission~~ by mail, telephone, electronic mail, or facsimile transmission (fax). When possible, the person shall make the report using LPG Form 22. If a person makes a report of unsafe or noncompliant LP-gas activities to the Division ~~Commission~~ without using LPG Form 22, the Division ~~Commission~~ shall complete the LPG Form 22. Within five business days of receipt of such report, the Division ~~Commission~~ shall notify the licensee and any other applicable persons in writing regarding the report and specify the reported violations, if any.

(b) - (c) (No change.)

*§9.41. Testing of LP-Gas Systems in School Facilities.*

(a) (No change.)

(b) School district requirements. Each school district shall ensure that a pressure test ~~for leakage~~ is performed on the LP-gas piping system in each school district facility as specified in this section.

(1) - (3) (No change.)

(4) A school district shall provide written notice to the Safety Division (the Division) ~~Commission~~ specifying the date and the result of each pressure test ~~or other inspection~~ of the LP-gas piping system within one week of the date each test is performed.

(5) (No change.)

(c) (No change.)

(d) Commission requirements.

(1) The Division ~~Commission~~ shall maintain a copy of each school district's written notice under subsection (b)(4) of this section for at least one year from the date the Division ~~Commission~~ receives the notice.

(2) At the request of a school district, the Division ~~Commission~~ shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

(3) The Division ~~Commission~~ shall enforce the provisions of this rule pursuant to Texas Natural Resources Code, Chapter 113.

(e) Compliance deadlines.

(1) Each school district shall perform pressure ~~leakage~~ tests as required by this section at least once every two years beginning with the 2002-2003 school year.

(2) School districts shall complete the initial pressure ~~leakage~~ tests before the beginning of the 2002-2003 school year. In the case of a year-round school, a school district shall ensure that the pressure test in each of those facilities is conducted and reported not later than July 1 of the year in which the test is performed, with the first test due by July 1, 2002.

(3) (No change.)

*§9.51. General Requirements for Training and Continuing Education.*

(a) (No change.)

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to the Alternative Fuels Research and Education Division (AFRED) ~~LP-Gas Safety Section~~.

(1) The training requirements apply only to applicants for Category D, E, F, G, I, J, ~~or~~ K, or M management-level certificates and certain employee-level certificates.

(2) - (4) (No change.)

(c) (No change.)

(d) No partial credit. Individuals attending classes shall receive credit only if they attend the entire class ~~properly complete any AFT~~, and pay any training or continuing education course fees in full. The Commission shall not award partial credit for partial attendance.

(e) Schedules. Dates and locations of available AFRED ~~Commission~~ LP-gas training and continuing education classes can be obtained in the Austin offices of ~~the Gas Services Division and~~ AFRED, and on the Commission's web site at [www.rrc.state.tx.us](http://www.rrc.state.tx.us) and shall be updated at least monthly. AFRED ~~Commission~~ classes shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFRED ~~Commission~~ classes be taught in their area. AFRED ~~The Commission~~ shall schedule its classes and locations at its discretion.

(f) Registering for a class.

(1) (No change.)

(2) Costs for classes.

(A) Each registration for a training class shall require the payment of the applicable nonrefundable class fee as follows:

(i) (No change.)

(ii) \$150 for the initial 16-hour Category F, G, ~~and~~ I, and J class; and

(iii) (No change.)

(B) The Category E, F, G, ~~and~~ I, and J class fees do not include the management-level rules examination or license fee described in §9.6 and §9.10 of this title (relating to Licenses and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, ~~or~~ I or J shall not be required to pay the \$75 class fee.

(D) (No change.)

(E) Requests for classes where no training or continuing education class credit is given shall be submitted in writing to the AFRED training section. The AFRED training section may conduct the requested classes at its discretion. The nonrefundable fee for a non-credit class is \$250 if no overnight expenses are incurred by the

AFRED training section, or \$500 if overnight expenses are incurred. A political subdivision is not required to pay the non-credit class fee.

(F) AFRED ~~[The Commission]~~ may charge reasonable fees for materials for classes using third-party materials.

(3) AFRED ~~[The Commission]~~ shall schedule individuals to attend classes on a first-come, first-served basis, except as follows:

(A) Priority for attending the 16-hour Category F, G, ~~[and] I,~~ and J class, and the 80-hour Category E class is based on when the class fee is paid.

(B) Priority for attending classes other than the 16-hour Category F, G, ~~[and] I,~~ and J class, and the 80-hour Category E class shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.

(C) If any class has fewer than eight individuals registered within seven calendar days prior to the class, AFRED ~~[the Commission]~~ may cancel the class and may ~~[shall either refund any class registration fees or shall]~~ reschedule the registered individuals in another class agreed upon by the individuals and the AFRED training section. The AFRED training section reserves the right to determine class sizes for all classes.

(4) (No change.)

(5) Applicants who take classes offered by an entity other than AFRED ~~[the Commission]~~ shall comply with the registration, fee, and other requirements specified by that entity.

(g) Retention of records. Individual applicants or certificate holders shall be responsible for promptly notifying the AFRED training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify AFRED ~~[the LP-Gas Safety Section]~~ of any discrepancies or errors in examination records or certification cards. In the event of a discrepancy, AFRED's ~~[the Commission's]~~ records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

#### *§9.52. Training and Continuing Education Courses.*

(a) Training. Applicants for a new certification listed in this subsection, other than Category E, F, G, ~~[or] I,~~ or J management-level individuals and except as stated in paragraph (4) of this subsection, shall attend at least eight hours of training prior to their first certificate renewal deadline of May 31 of the appropriate year. Applicants for Category D, E, F, G, I, J, ~~[or] K,~~ or M management-level certification shall attend the course or courses specified for the category. Category E applicants shall attend the 80-hour class; Category F, G, ~~[and] I,~~ and J applicants shall attend the 16-hour class; and all other applicants shall attend an eight-hour class. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training class.

(1) The following management- or employee-level applicants shall complete the training requirements:

(A) - (G) (No change.)

(H) Category M management-level;

(I) ~~[(H)]~~ Bobtail ~~[Delivery truck]~~ employee-level;

(J) ~~[(H)]~~ DOT portable cylinder filler employee-level;

(K) ~~[(H)]~~ Service and Installation employee-level;

~~(L)~~ ~~[(K)]~~ Appliance service and installation employee-level; ~~[and]~~

~~(M)~~ ~~[(L)]~~ Motor/mobile fuel dispensing employee-level; ~~and~~ ~~[-]~~

~~(N)~~ Recreational vehicle (RV) technician employee-level.

(2) - (4) (No change.)

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years. Upon fulfillment of this requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent class the certificate holder has completed, unless the class was completed on May 31, in which case the deadline shall be four years from that date. A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be extended only after a certificate holder successfully completes an applicable continuing education class. An individual who completes a continuing education class after the assigned deadline shall have four years from the original deadline to complete the next class.

(1) Individuals completing their continuing education requirements shall then have four years to complete the next eight-hour continuing education requirement (unless a new certification is added that requires training as specified in subparagraph (B) of this paragraph).

(A) Certificate holders with one of the following certificates shall complete the continuing education classroom instruction and any required AFT for that class:

(i) - (vii) (No change.)

(viii) Category M management-level;

(ix) ~~[(viii)]~~ Bobtail ~~[Delivery truck]~~ employee-level;

~~(x)~~ ~~[(ix)]~~ DOT portable cylinder filler employee-level;

(xi) ~~[(x)]~~ Service and Installation employee-level;

~~(xii)~~ ~~[(xi)]~~ Appliance service and installation employee-level; ~~[and]~~

~~(xiii)~~ ~~[(xii)]~~ Motor/mobile fuel dispensing employee-level; ~~and~~ ~~[-]~~

~~(xiv)~~ Recreational vehicle (RV) technician employee-level.

(B) Certificate holders who hold only a Category D, F, G, J, or K certificate as of the effective date of this section shall complete their initial continuing education requirement by May 31, 2005. Beginning September 1, 2005, Category M and recreational vehicle technician certificate holders shall have until May 31, 2006, to complete their initial continuing education requirement. Certificate holders who hold a Category D, F, G, J, ~~[or] K,~~ or M certificate or a recreational vehicle technician certificate and who have more than one certification as of February 1, 2001, ~~[the effective date of this section]~~ shall complete their continuing education requirement by the continuing education deadline assigned for the initial certificate.

(C) (No change.)

(2) - (4) (No change.)

(c) (No change.)

(d) Class materials. Individuals who attend AFRED-taught [~~Commission-taught~~] classes shall receive a copy of the class materials at no charge. Additional copies may be purchased from AFRED [~~the Commission~~] at the established price.

(e) Certificates of completion. The AFRED training section shall issue a certificate of completion to each individual who completes an AFRED-taught [~~a Commission-taught~~] class. Individuals shall retain the certificates as proof of completion of the class.

(f) Advanced field training (AFT). Some classes may include AFT in addition to the classroom hours, during which class attendees shall perform LP-gas activities. AFT shall be properly completed within 30 calendar days of attending the class. All qualification tasks included in the AFT shall be completed. The AFT materials, including the qualification checklist and the certification page, shall be readily available at the licensee's Texas business location for review by an authorized Commission representative during normal business hours.

(1) (No change.)

(2) Other AFT situations shall be handled as follows:

(A) - (E) (No change.)

(F) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified ceases employment with the licensee and wishes to continue performing LP-gas activities, the individual shall contact a company representative or operations supervisor of another applicable licensee or an AFRED-approved [~~approved Commission~~] outside instructor to complete the AFT and maintain the LP-gas certification.

(3) Individuals who attend the 80-hour Category E management-level class or the 16-hour Category F, G, [~~or~~] I, or J management-level class shall perform any required AFT activities during the class.

(4) (No change.)

(g) Available courses. Training and continuing education courses and other information are shown in Tables 1 through 4 of this subsection. Items on the tables marked with an "x" indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category. Figure: 16 TAC §9.52(g)

#### *§9.54. Commission-Approved Outside Instructors.*

(a) General.

(1) AFRED [~~The Commission~~] may approve and award training or continuing education credit for the management-level and employee-level applicants and certificate holders specified in this section offered by an outside instructor provided the outside instructor complies with the requirements of this section.

(A) (No change.)

(B) Authorized Category E outside instructors may offer only the applicable training and continuing education classes to Category D or K management-level applicants and to portable cylinder filling, motor/mobile fuel dispenser, bobtail [~~delivery truck~~], service and installation, and appliance service and installation applicants and employee-level certificate holders.

(C) Authorized Category M outside instructors may offer only the applicable training and continuing education classes to Category M management-level applicants and recreational vehicle technician employee-level applicants or certificate holders.

(2) (No change.)

(3) All curriculum and course materials submitted for AFRED [~~Commission~~] review by an outside instructor applicant shall be printed or typewritten, organized, and easily readable, and shall remain confidential within the limits of Tex. Gov't Code, Chapter 552 (Public Information Act).

(4) Copies of the AFRED [~~Commission's~~] curricula and materials are available from AFRED [~~the Commission~~] at a reasonable cost.

(b) Application process. Outside instructor applicants shall submit the following to AFRED [~~the Commission~~]:

(1) (No change.)

(2) a copy of the applicant's Category D, E, or M [~~or E~~] current certification card or, in the case of Category D only, a copy of the master or journeyman plumber/class A or B registration/examination exemption certificate [~~exemption card~~] issued by the License and Permit Section of the Gas Services Division [~~LP-Gas Safety Section~~];

(3) for each course the outside instructor applicant intends to teach:

(A) (No change.)

(B) the course materials and related supporting information or a statement that the instructor will use the AFRED [~~Commission's~~] course materials;

(C) (No change.)

(4) - (5) (No change.)

(c) Curriculum standards. The curriculum for each course that an outside instructor applicant intends to teach shall include, where applicable, information that is at least the equivalent of AFRED's [~~the Commission's~~] course or courses on the same topic or topics, and shall include all applicable current LP-gas regulations for Texas. Courses not offered by AFRED [~~the Commission~~] may be approved if the courses are equal or greater in overall quality to other approved courses.

(d) AFRED [~~Commission~~] review. AFRED [~~the Commission~~] shall review the application for approval as an outside instructor and, within 14 business days of the filing of the application, shall notify the applicant in writing that the application is approved, denied, or incomplete. If an application is incomplete, AFRED's [~~The Commission's~~] notice of deficiency shall identify the necessary additional information, including any deficiencies in course materials. The outside instructor applicant shall file the necessary additional information within 30 calendar days of the date of AFRED's [~~the Commission's~~] notice of deficiency. The outside instructor applicant's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's application and the necessity of the outside instructor applicant again paying the non-refundable \$300 registration fee for each subsequent filing of an application.

(e) Additional requirements for approval. Outside instructor applicants whose applications are approved in writing by AFRED [~~the Commission~~] shall attend AFRED's [~~the Commission's~~] Train-the-Trainer Course, the fee for which is included in the \$300 registration fee. The Train-the-Trainer Course shall include classroom instruction and the subject-matter examinations for each course for which the applicant seeks approval to conduct. An outside instructor applicant shall pass the subject-matter examination for each course with a score of at least 85 percent and shall attend the subject-matter courses for which the applicant seeks approval to conduct.

(f) Notification of approval. Within 10 business days of the outside instructor applicant's completion of the requirements of this section, AFRED [~~the Commission~~] shall notify the applicant in writing

that the applicant is approved as an outside instructor and the outside instructor may then begin offering the courses for which AFRED [the Commission] approved the outside instructor.

(g) Term of approval. AFRED [the Commission] approval of an outside instructor remains valid for three years unless the Commission revokes the approval pursuant to subsection (l) of this section.

(h) Renewal of approval. To continue offering AFRED-approved [Commission-approved] LP-gas classes, an outside instructor shall renew his or her AFRED [the Commission] approval every three years by paying a nonrefundable \$150 renewal fee to AFRED [the Commission] and attending a Train-the-Trainer refresher class prior to the outside instructor's next renewal deadline.

(i) Revision of course materials. An outside instructor who revises any course materials previously approved by AFRED [the Commission] shall submit the revisions in writing, along with a nonrefundable \$100 review fee to AFRED [the Commission], and shall not use the materials in a course until the outside instructor has received written AFRED [the Commission] approval. AFRED [The Commission] shall review the revised course materials and, within 14 business days, shall notify the outside instructor in writing that the revised course materials are approved or not approved. If the revised course materials are not approved, AFRED's [the Commission's] notice shall identify the portion or portions that are not approved and/or shall describe any deficiencies in the revised course materials. The outside instructor shall file any necessary additional information within 30 calendar days of the date of AFRED's [the Commission's] notice of disapproval. The outside instructor's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's request for approval of revised course materials and the necessity of again paying the \$100 review fee for each subsequent filing of revised course materials.

(j) Continuing requirements. Outside instructors shall:

(1) maintain their Category D, E, or M ~~[or E]~~ certificate or Category D registration/examination exemption certificate ~~[exemption eard]~~ in continuous good standing. The Train-the-Trainer class shall not count as credit towards any training or continuing education requirements. Any interruption of the required Category D, E, or M ~~[or E]~~ certification or Category D registration/examination exemption certificate ~~[exemption eard]~~ may result in the Commission revoking the outside instructor's approval;

(2) (No change.)

(3) report to AFRED [the Commission] within three business days of the conclusion of a class the names, social security numbers, and any other information required by AFRED [the Commission], of the persons completing the class. The report shall be made by electronic mail (e-mail) in an electronic format provided by AFRED [the Commission]. The outside instructor shall ensure that AFRED [the Commission] receives the report by securing written acknowledgment of its receipt by AFRED [the Commission]. This acknowledgment may be by return electronic mail (e-mail) or by facsimile transmission (fax).

(k) Disclaimer. Outside instructors are responsible for every aspect of the classes they teach, including the location, schedule, date, time, duration, price, content, material, demeanor and conduct of the outside instructor, and reporting of attendance information. AFRED [The Commission] shall not monitor or supervise the actual class presentations by outside instructors. AFRED [The Commission] is not obligated to gather, maintain, or distribute information about outside instructors' course offerings, other than the names, telephone numbers, and addresses of approved outside instructors and the date on which an

outside instructor's approval would expire, absent renewal. AFRED [The Commission] may refuse to issue or renew a certificate for an individual who presents for [Commission] credit an unapproved class; a class taught by an unapproved outside instructor; or a class taught using unapproved, incomplete, or incorrect materials.

(l) Complaints.

(1) Complaints regarding outside instructors shall be made to AFRED [the Commission] in writing by electronic mail (e-mail), facsimile transmission (fax), or U. S. Postal Service; shall include the printed name, address, telephone number, and, if filed by fax or U.S. Postal Service, the signature of the person complaining; shall state the outside instructor's name, the date, location, and title of the course; and shall set forth the facts that the complainant alleges demonstrate that the outside instructor:

(A) failed to meet or maintain AFRED [the Commission] requirements for outside instructor approval;

(B) - (C) (No change.)

(2) Upon receipt of a complaint and at its discretion, AFRED [the Commission] may gather any additional information necessary or appropriate to making a full and complete analysis of the complaint. AFRED [The Commission] shall deliver a written copy of the analysis and any findings by certified mail to the outside instructor who is the subject of the complaint. The outside instructor may file a written response within 20 calendar days from the date the findings are postmarked.

(3) If AFRED [the Commission] determines that an outside instructor has engaged in conduct prohibited by this section, AFRED [the Commission] may prepare a report that states the facts on which the determination is based and the recommendation as to the action AFRED [the Commission] intends to take. AFRED [The Commission] may issue a written warning to the outside instructor; decline to approve or renew the outside instructor's approval; or revoke the outside instructor's approval.

(4) AFRED [The Commission] shall mail a copy of the report and recommendation to the outside instructor by certified mail and shall include a statement that the outside instructor has a right to a hearing on the determination contained in the report.

(5) (No change.)

(6) If the outside instructor accepts the determination, he or she shall notify AFRED [the Commission] in writing of the acceptance, and AFRED [the Commission] shall take the action indicated in the report.

(7) If an outside instructor requests a hearing or fails to respond timely to the notice given under paragraph (5) of this subsection, the AFRED director shall refer the matter to the Office of General Counsel for the setting of a hearing. The Office of General Counsel shall assign an examiner to conduct a hearing, which shall be conducted under the Commission's General Rules of Practice and Procedure, Chapter 1 of this title (relating to Practice and Procedure).

(8) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501070

Mary Ross McDonald  
Managing Director  
Railroad Commission of Texas  
Proposed date of adoption: September 1, 2005  
For further information, please call: (512) 475-1295



## 16 TAC §9.33, §9.53

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

§9.33. *LP-Gas Welding Advisory Committee.*

§9.53. *Continuing Education Credit for Previous Courses.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501071

Mary Ross McDonald  
Managing Director  
Railroad Commission of Texas

Proposed date of adoption: September 1, 2005  
For further information, please call: (512) 475-1295



## SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

### 16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113, 9.115, 9.126, 9.129, 9.130, 9.132, 9.134, 9.140 - 9.143

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection

Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

§9.101. *Filings Required for Stationary LP-Gas Installations.*

(a) No LP-gas container shall be placed into LP-gas service or an installation operated or used in LP-gas service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable LP-Gas Safety Rules and statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located. LP-gas systems under the jurisdiction of DOT Safety regulations in 49 CFR Parts 192 and 199, and Part 40 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service.

(b) Commercial installations with an aggregate water capacity of less than 10,000 gallons.

(1) Within 30 [40] calendar days following the completion of a container installation, the licensee shall submit LPG Form 501 to the Gas Services Division (the Division) [~~Commission~~] stating:

(A) - (C) (No change.)

(2) Pay a nonrefundable fee of \$10 for each LP-gas container, including cylinders, each retail LP-gas cylinder exchange storage rack, and each forklift cylinder exchange rack or a forklift cylinder exchange installation where a storage rack is not installed that is listed on the form. A nonrefundable \$35 [\$20] fee shall be required for any resubmission.

(3) The Division [~~Commission~~] shall review the submitted information within 21 business days of receipt of all required information and shall notify the applicant in writing of any deficiencies. LP-gas operations may commence prior to the submission of LPG Form 501 if the facility is in compliance with the LP-Gas Safety Rules.

(c) Aggregate water capacity of 10,000 gallons or more.

(1) For installations with an aggregate water capacity of 10,000 gallons or more, the licensee shall submit the following information to the Division [~~Commission~~] at least 30 days prior to construction if the applicant is required to give notice as described in §9.102 of this title (relating to Notice of Stationary LP-Gas Installations):

(A) - (E) (No change.)

(2) In addition to NFPA 58, §3.2.3.3, prior to the installation of any individual LP-gas container, the Division [~~Commission~~] shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare.

(A) The Division [~~Commission~~] may impose restrictions or conditions on the proposed LP-gas installation based on one or more of the following factors:

(i) - (viii) (No change.)

(B) (No change.)

(3) If an LP-gas stationary installation, equipment, or appurtenances not specifically covered by the LP-Gas Safety Rules has



been or will be installed, the Division [~~Commission~~] shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with the Division's [~~Commission's~~] determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Division [~~Commission~~] has determined that the installation is safe for LP-gas service.

(4) The Division [~~Commission~~] shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(5) The licensee shall not commence construction until notice is received from the Division [~~Commission~~]. Upon completion of a field inspection as specified in §9.109 of this title (relating to Physical Inspection of Stationary LP-Gas Installations), the operator, pending the inspection findings, may commence LP-gas operations of the facility.

(6) If the subject installation is not completed within one year from the date of the Division's completed review, the requirements of this subsection shall be resubmitted for the Division's review.

(d) - (e) (No change.)

(f) In addition, the Division [~~Commission~~] may request LPG Form 5, LPG Form 8, or any other documentation or information pertinent to the installation in order to determine compliance with the LP-Gas Safety Rules.

~~[(g) If the subject installation is not completed within one year from the date of the Commission's completed review, the requirements of subsection (e) shall be resubmitted for the Commission's review.]~~

#### *§9.102. Notice of Stationary LP-Gas Installations.*

(a) For a proposed installation with an aggregate water capacity of 10,000 gallons or more, an applicant shall send a copy of the filings required under §9.101(c) of this title (relating to Filings Required for Stationary LP-Gas Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with the Safety Division (the Division) [~~Commission~~]. The Division [~~Commission~~] shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners. The applicant may obtain names and addresses of owners from current county tax rolls.

(b) An applicant shall notify owners of real property situated within 500 feet of any proposed container location if:

(1) - (2) (No change.)

(3) the Division [~~Commission~~] considers notice to be in the public interest.

(c) (No change.)

#### *§9.103. Objections to Proposed Stationary LP-Gas Installations.*

(a) Each owner of real property situated within 500 feet of the proposed location of any LP-gas containers of 10,000 gallon aggregate water capacity or more receiving notice of a proposed installation shall have 18 calendar days from the date the notice is postmarked to file a written objection using the LPG Form 500A sent to them by the applicant as described in §9.107(a)(1) [~~§9.107(a)(2)~~] of this title (relating to Hearings on Stationary LP-Gas Installations) with the Safety Division (the Division) [~~Commission~~]. An objection is considered timely filed when it is actually received by the Commission.

(b) The Division [~~Commission~~] shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(1) - (3) (No change.)

(c) Upon review of the objection, the Division [~~Commission~~] shall either:

(1) (No change.)

(2) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of the Division's [~~Commission's~~] letter to file its corrected objection. Clarification of incomplete or non-substantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

#### *§9.107. Hearings on Stationary LP-Gas Installations.*

(a) Reason for hearing. The Safety Division (the Division) [~~Commission~~] shall call a public hearing if:

(1) (No change.)

(2) the Division [~~Commission~~] receives an objection that complies with §9.103 of this title (relating to Objections to Proposed Stationary LP-Gas Installations); or

(3) the Division [~~Commission~~] determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. The Division [~~Commission~~] shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under §9.102 of this title (relating to Notice of Stationary LP-Gas Installations).

(c) (No change.)

#### *§9.109. Physical Inspection of Stationary LP-Gas Installations.*

(a) Aggregate water capacity of 10,000 gallons or more. The applicant shall notify the Safety Division (the Division) [~~Commission~~] in writing when the installation is ready for inspection. If the Division [~~Commission~~] does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the Division's [~~Commission's~~] initial inspection, the installation may be required to cease LP-gas operations until the violations are corrected.

(b) Aggregate water capacity of less than 10,000 gallons. After receipt of LPG Form 501, the Division [~~Commission~~] shall conduct an inspection as soon as possible to verify that the installation described is in compliance with the LP-Gas Safety Rules. The facility may be operated prior to inspection if it is in compliance with the LP-Gas Safety Rules. If any LP-gas statute or safety rule violation exists at the time of the first inspection at a commercial installation, the subject container, including any piping, appliances, appurtenances, or equipment connected to it may be immediately removed from LP-gas service until the violations are corrected.

(c) Material variances. If the Division [~~Commission~~] determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to the Division [~~Commission~~] or resubmission of the application is required. The review of such resubmitted application shall comply with §9.101

of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) In the event an applicant has requested an inspection and the Division ~~[Commission]~~ inspection identifies violations requiring modifications by the applicant, the Division ~~[Commission]~~ shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

*§9.110. Emergency Use of Proposed Stationary LP-Gas Installations.*

When there is an immediate need for LP-gas supply under emergency circumstances, the Safety Division (the Division) ~~[Commission]~~ may waive the requirement for the initial complete inspection for a limited time period in order to meet the emergency need. LP-gas shall not be introduced into the container and it shall not be placed into LP-gas service until the Division ~~[Commission]~~ grants permission to do so.

*§9.113. Maintenance.*

All LP-gas storage containers, valves, dispensers, accessories, piping, ~~[and] transfer equipment, gas utilization equipment, and appliances~~ shall be maintained in safe working order and in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If any one of the LP-gas storage containers, valves, dispensers, accessories, piping, ~~[and] transfer equipment, gas utilization equipment, and appliances~~ is not in safe working order, the Safety Division may require that the installation ~~[shall]~~ be immediately removed from LP-gas service and ~~[shall]~~ not be operated until the necessary repairs have been made.

*§9.115. Examination and Testing of Containers.*

(a) In order to determine the safety of a container, the Safety Division (the Division) ~~[Commission]~~ may require that the licensee or operator of the container send a copy of the manufacturer's data report on that container to the Division ~~[Commission]~~. The Division ~~[Commission]~~ may also require that the container and equipment be examined by a Category A, B, or O licensee, with a comprehensive report on the findings submitted to the Division ~~[Commission]~~ for its consideration. This subsection may be applied even though an acceptable LPG Form 23 has been received.

(b) Any stationary ASME LP-gas container previously in LP-gas service which has not been subject to continuous LP-gas vapor pressure shall be retested by an authorized Category A, B, or O licensed entity utilizing recognized ASME test methods to determine if the container is safe for LP-gas use in Texas, and the test results shall be submitted to the Division ~~[Commission]~~ on LPG Form 8.

(c) Any stationary ASME LP-gas container which has been subject to continuous LP-gas vapor pressure is not required to be tested prior to installation, provided the licensee or operator of the container files a properly completed LPG Form 23 with the Division ~~[Commission]~~ at the time LPG Form 500 is submitted for any facility requiring submission of a site plan in accordance with §9.101 of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) Any stationary ASME LP-gas container brought into Texas from out-of-state and intended for stationary LP-gas installation in Texas at any facility requiring submission of a site plan shall be tested in accordance with subsection (b) of this section prior to review approval being granted by the Division ~~[Commission]~~, unless that container is owned by a valid licensee. In this case, the Division ~~[Commission]~~ may determine that such tests are not necessary upon the receipt of an acceptable LPG Form 23 from the licensee.

*§9.126. Appurtenances and Equipment.*

(a) All appurtenances and equipment placed into LP-gas service shall be listed by a nationally recognized testing laboratory such

as Underwriters Laboratory (UL), Factory Mutual (FM), or American Gas Association (AGA) unless:

(1) (No change.)

(2) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment; or[-]

(3) it is used and in compliance with any NFPA standard adopted by the Commission.

(b) (No change.)

(c) The licensee or operator of the appurtenances or the equipment shall maintain documentation sufficient to substantiate any claims regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish ~~[furnished]~~ copies to the Safety Division ~~[Commission]~~.

~~[(d) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Natural Resource Conservation Commission.]~~

*§9.129. Manufacturer's Nameplate and Markings on ASME Containers.*

(a) - (e) (No change.)

(f) Any replacement nameplate issued by an original container manufacturer for containers constructed prior to September 1, 1984, shall be stainless steel and shall be affixed in accordance with ASME Code. The owner or operator of the container shall ensure that a copy of LPG Form 8 is filed with the Safety Division (the Division) ~~[Commission]~~ when a replacement nameplate is affixed.

(g) - (h) (No change.)

(i) The Division ~~[Commission]~~ may remove a container from LP-gas service or require ASME acceptance of a container at any time if the Division ~~[Commission]~~ determines that the nameplate, in any form defined in subsection (a)(1) - (4) of this section, is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way and does not contain at a minimum the items defined in subsection (d) of this section.

*§9.130. Commission Identification Nameplates.*

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from the Commission. Commission identification nameplates shall be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the Commission identification nameplate is attached.

(1) (No change.)

(2) The Safety Division (the Division) ~~[Commission]~~ shall review LPG Form 502 and the supporting documentation. The Division ~~[Commission]~~ shall have the manufacturer's data report on file for the container or the licensee shall provide a copy to the Division ~~[Commission]~~. The Commission identification nameplate shall not be issued unless the manufacturer's data report is reviewed. Upon review of submitted documents and confirmation of the manufacturer's data report, the Division ~~[Commission]~~ shall mail a letter to the owner or operator of the container stating the estimated costs, which will be based on the following:

(A) actual cost of the nameplate itself, including adhesive and other materials necessary to attach the nameplate; and

(B) projected travel costs for the Commission employee performing the inspection and/or attachment of the nameplate, at a cost of \$60 plus the mileage and rate from Austin as set by the official state travel mileage chart. [including mileage and per diem rates set by the legislature; and]

~~[(C) hourly research fees calculated according to §20.105 of this title (relating to Charges for Providing Copies of Public Information); as applicable.]~~

(3) The owner or operator of the container shall pay the total estimated costs to the Division ~~[Commission]~~ before the Division ~~[Commission]~~ will proceed. Within 15 business days of receipt of all required documents and fees, the Division ~~[Commission]~~ shall:

(A) (No change.)

(B) inspect the container to ensure that the container is not dented, pitted, or otherwise damaged, and complies with other applicable LP-Gas Safety Rules, unless additional time is necessary as determined by the director of the Safety Division ~~[assistant director];~~ and

(C) advise the owner or operator that the container shall be tested if it appears to be pitted or otherwise damaged.

(i) (No change.)

(ii) If the container passes the test, the Division ~~[Commission]~~ shall proceed with the attachment of the nameplate.

(D) Within the 15-day period, the Division ~~[Commission]~~ shall notify the applicant in writing, in clear and specific language, of the outcome of the Division's ~~[Commission's]~~ review.

(4) Following the Division's ~~[Commission's]~~ review of any required tests and payment of all other amounts due in addition to the previously-paid estimated costs, and when all requirements have been met, the Division ~~[Commission]~~ shall issue an identification nameplate for the container.

(5) - (6) (No change.)

(b) (No change.)

(c) Commission identification nameplates shall not be valid until the Division ~~[Commission]~~ has received the final paperwork for the Commission employee who attached the nameplate. The Division ~~[Commission]~~ shall mail a letter to the owner or operator of the container stating the date on which the nameplate is valid.

(d) If at any time during the Commission identification nameplate request or approval process, the original ASME nameplate becomes completely unreadable or detached, the owner or operator of the container shall immediately remove the container from service and no Commission identification nameplate shall be issued or attached. In addition, the Division ~~[Commission]~~ may remove such a container from service as specified in §9.129(i) of this title (relating to Manufacturer's Nameplate and Markings on ASME Containers).

(e) (No change.)

(f) Fees charged for the Commission identification nameplate are nonrefundable except as described in this section. The cost of the nameplate is refundable only if the Commission employee finds upon actual inspection of the container that the original nameplate has become totally detached or unreadable, or that the container is pitted, dented, or otherwise damaged, therefore prohibiting attachment of the nameplate. The fees charged relating to the Division's ~~[Commission's]~~ travel and research costs will be refunded only if the Division's ~~[Commission's]~~ research shows that the nameplate cannot be issued. Otherwise, these fees will be nonrefundable if these activities have taken

place before the Commission employee inspects a container and finds that a nameplate cannot be issued.

#### §9.132. Sales to Unlicensed Individuals.

A licensee shall not sell LP-gas or an LP-gas container to an unlicensed individual for resale. A licensee shall not sell an LP-gas container to an unlicensed individual ~~[or]~~ for installation without determining that such container will be installed by a licensee authorized to perform such installation.

#### §9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division ~~[- provided the piping system complies with the LP-Gas Safety Rules].~~

#### §9.140. Uniform Protection Standards.

(a) LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guardrail requirements in subsections (b) and (d) ~~[(e)]~~ of this section. The fencing and guardrail requirements also do not apply to the following:

(1) - (4) (No change.)

(b) (No change.)

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by the Safety Division ~~(the Division)~~ ~~[Commission]~~ as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

(2) - (3) (No change.)

(d) In addition to NFPA 58, §§3.2.4.2, 3.2.9.1(a) - (d), 3.2.9.2(d), 3.3.6.1, 3.9.3.8, 5.4.2.1, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) - (3) (No change.)

(4) Openings in horizontal guardrail, except the opening that is permitted ~~[required]~~ directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrail. A means of temporarily removing the horizontal guardrail and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrail and vertical supports. In no case shall the protection provided by the horizontal guardrail and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrail.

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects a

bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead.

(6) (No change.)

(e) (No change.)

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrail, then the licensee or operator shall install such additional protection. In addition, the Division ~~[Commission]~~ at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division ~~[Commission]~~ shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's ~~[Commission's]~~ determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division ~~[Commission]~~ or removed from service with all product withdrawn from it until the Division's ~~[Commission's]~~ final decision.

(g) LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.

Figure: 16 TAC §9.140(g)

(1) - (4) (No change.)

(5) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(h) In addition to NFPA 58, §5.4.2.2, storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) - (2) (No change.)

(3) Guardrail or guardposts are not required to be installed if:

(A) - (B) (No change.)

(C) a minimum four-inch-high ~~[six-inch-high]~~ cement parking wheelstop is installed on the driveway or parking space at least 12 inches from the curb;

(D) (No change.)

(E) the distance from the cement parking wheelstop to any portable cylinder exchange rack is 60 ~~[48]~~ inches or more.

(4) (No change.)

(5) If exceptional circumstances exist or will exist at the location of a storage rack which would require additional protection such as larger-diameter guardrail or guardposts, then the licensee or operator of the installation shall install such additional protection. In addition, the Division ~~[Commission]~~ at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division ~~[Commission]~~ shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's ~~[Commission's]~~ determination made under this subsection, that person may request a public hearing on the matter. The installation shall either

be protected in the manner prescribed by the Division ~~[Commission]~~ or removed from service with all product withdrawn from it until the Division's ~~[Commission's]~~ final decision.

#### *§9.141. Uniform Safety Requirements.*

(a) In addition to NFPA 58, §3.2.4.1(f), containers shall be painted as follows:

(1) (No change.)

(2) If the Safety Division ~~(the Division)~~ ~~[Commission]~~ disapproves of a certain color, the licensee or ultimate consumer shall provide to the Division ~~[Commission]~~ information from the container or paint manufacturer stating specific reasons why the color is heat-reflective and should be approved. The director of the Division ~~[assistant director]~~ shall make the final determination and shall notify the licensee or ultimate consumer.

(b) - (f) (No change.)

(g) Any container that may have contained product other than LP-gas shall be thoroughly cleaned and purged prior to introducing LP-gas into such container. Only grades of LP-gas determined to be noncorrosive may be introduced into any container. LP-gas may not contain anhydrous ammonia, hydrogen sulfide, or any other contaminant.

(1) If it is known or suspected that the LP-gas has been or may be contaminated, the person responsible for the contamination shall have one or more of the tests contained in "Liquefied Petroleum Gas Specifications for Test Methods, Gas Processors Association (GPA) 2140" performed by a testing laboratory or individual qualified to perform the tests. The Division ~~[Commission]~~ may request information necessary to determine the qualification of any testing laboratory or individual.

(2) (No change.)

(3) Based on the results of the tests, the Division ~~[Commission]~~ may require that the LP-gas be removed immediately from the container or that the container be removed immediately from LP-gas service.

(h) - (i) (No change.)

#### *§9.142. LP-Gas Container Storage and Installation Requirements.*

Except as noted in this section, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §§3.2.2, 3.2.2.6, and 5.4.1 ~~[§3.2.2 and the entries for §3.2.2.7 and §5.4.1 as indicated in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections)]~~ and any other applicable requirements in NFPA 58 or the LP-Gas Safety Rules.

(1) - (2) (No change.)

#### *§9.143. Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.*

(a) Instead of NFPA 58, §§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6 ~~[§3.2.19.1]~~, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead and pneumatically-operated internal valves and pneumatically-operated emergency shutoff valves (ESVs), as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) for NFPA 58, §§3.2.18.1 and ~~[;]~~ 3.3.3.6 ~~[; and 3.4.1.3]~~. In lieu of a

pneumatically-operated internal valve or a pneumatically-operated ESV, a back check valve where the flow is into the container only may be installed. [The filling of a container solely through a 1 3/4 inch double back check filler valve; directly installed in the container; and withdrawal of LP-gas through a commercially manufactured liquid evacuation valve; is exempt from the requirements of this section.]

(1) The pneumatic ESVs shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESVs shall be installed in the piping so that any break resulting from a pullaway will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Temperature sensitive elements of ESVs shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-operated internal valves and ESVs shall be interconnected and incorporated into at least one remote operating system.

(b) Within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead and/or backflow check valves where the flow is in one direction into the container and ESVs installed shall install vertical bulkheads and pneumatic ESVs. [The filling of a container solely through a 1 3/4 inch double back check filler valve; directly installed in the container; and withdrawal of LP-gas through a commercially manufactured liquid evacuation valve; is exempt from the requirements of this section.]

[(1) The pneumatic ESVs shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 24 inches long installed between the ESV and the bulkhead.]

[(2) The ESVs shall be installed in the piping so that any break resulting from a pullaway will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.]

[(3) Temperature sensitive elements of ESVs shall not be painted nor shall they have any ornamental finishes applied after manufacture.]

[(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be

documented in writing and kept in a readily accessible location for one year following the performed tests.]

[(5) Pneumatically-operated internal valves and ESVs shall be incorporated into at least one remote operating system.]

(c) (No change.)

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) - (3) (No change.)

(4) Bulkheads shall be located at least 10 feet from any aboveground [the] container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed above-ground on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Safety Division (the Division) [Commission] in writing and include all necessary information. The Division [Commission] may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) - (6) (No change.)

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.

Figure: 16 TAC §9.143(d)(7) (No change.)

(A) - (B) (No change.)

(C) The top crossmember of a vertical bulkhead shall be [28 inches or less above ground level and shall be] six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway;

(D) The kick plate shall be at least 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) (No change.)

(8) (No change.)

(9) The Division [Commission] may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §2.3.3.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), ESVs and internal valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV; beginning September 1, 2005, this distance shall be a minimum of 25 feet. Existing installations shall comply by

August 1, 2001. The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) - (g) (No change.)

(h) If necessary to increase LP-gas safety, the Division [~~Commission~~] may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container; and

(2) the LP-gas installation is not used to fill an LP-gas transport.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501068

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295

◆ ◆ ◆

## 16 TAC §9.114

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

§9.114. *Odorizing and Reports.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501069

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295

◆ ◆ ◆

## SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

### 16 TAC §§9.201 - 9.204, 9.208, 9.211

The amendments and new rule are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

#### §9.201. *Applicability.*

(a) This subchapter applies to transport containers and moveable fuel storage tenders such as farm carts constructed to MC-330 or MC-331 Department of Transportation (DOT) specifications, nonspecification units, container delivery units, school buses, mass transit vehicles, special transit vehicles, and public transportation vehicles.

(1) Transfer of LP-gas from one transport to another shall be permitted only through a hose with a nominal inside diameter of 1 1/4 inch or less and protected by an off-truck remote control shutdown as required in 49 CFR.

(2) An LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from the Safety Division.

(b) (No change.)

(c) Licensees and ultimate consumers shall comply with other DOT or motor vehicle requirements, if applicable. In addition, transports and container delivery units shall also comply with the applicable sections of Title 49 CFR, the Federal Motor Vehicle Safety Standards, and any other applicable regulations. Examples of such additional requirements are as follows:

(1) 49 CFR §177.834(j) states: "Except for a cargo tank conforming to §173.29(b)(2) of this subchapter, a person may not drive a cargo tank motor vehicle containing a hazardous material regardless

of quantity unless: (1) All manhole closures are closed and secured; and (2) All valves and other closures in liquid discharge systems are closed and free of leaks." ["Manholes and valves closed. A person may not drive a cargo tank and a motor carrier may not permit a person to drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless all manhole closures are closed and secured, and all valves and other closures in liquid discharge systems are closed and free of leaks."]

(2) - (3) (No change.)

*§9.202. Registration and Transfer of LP-Gas Transports or Container Delivery Units.*

(a) A person who operates a transport equipped with LP-gas cargo tanks or any container delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with the License and Permit Section of the Gas Services Division (the Section) [Commission] in the name or names under which the operator conducts business in Texas prior to the unit being used in LP-gas service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to the Section [Commission] the \$270 registration fee for each bobtail truck, semitrailer, container delivery unit, or other motor vehicle equipped with LP-gas cargo tanks; and

(B) (No change.)

(2) To register an MC-330/MC-331 specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to the Section [Commission] the \$270 registration fee;

(B) - (C) (No change.)

(3) (No change.)

(b) The Section [Commission] may also request that an operator registering or transferring any unit:

(1) - (2) (No change.)

(c) When all registration or transfer requirements have been met, the Section [Commission] shall issue LPG Form 4 which shall be properly affixed in accordance with the placement instructions on the form. LPG Form 4 shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of LP-gas and to fill the transport containers.

(1) A person shall not operate an LP-gas transport unit or container delivery unit in Texas unless the LPG Form 4 has been properly affixed or unless its operation has been specifically approved by the Section [Commission].

(2) A person shall not introduce LP-gas into a transport container unless that unit bears an LPG Form 4 or unless specifically approved by the Section [Commission].

(3) - (4) (No change.)

(5) The Section [Commission] shall not issue an LPG Form 4 if:

(A) the Section [Commission] or a Category A, B, or O licensee determines that the transport is unsafe for LP-gas service;[-]

(B) the Section does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006; or

(C) the Section has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter.

(6) If an LPG Form 4 decal on a unit currently registered with the Section [Commission] is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B and a \$50 replacement fee with the Section [Commission].

*§9.203. School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections.*

(a) After the manufacture of or the conversion to an LP-gas system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify the Safety Division (the Division), [Commission] in writing on LPG Form 503 that the applicable LP-gas powered vehicles are ready for a complete inspection to determine compliance with the LP-Gas Safety Rules.

(b) If the Division [Commission's] initial complete inspection finds the vehicle in compliance with the LP-Gas Safety Rules and the statutes, the vehicle may be placed into LP-gas service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the LP-Gas Safety Rules. If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into LP-gas service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. For public transportation vehicles only, either manufactured to use or converted to LP-gas, if the Division [Commission] does not conduct the initial inspection of such vehicle within 30 business days of receipt of LPG Form 503, the vehicle may be operated in LP-gas service if it complies with the LP-Gas Safety Rules. The manufacturer, licensee, or ultimate consumer shall file with the Division [Commission] documentation demonstrating compliance with the LP-Gas Safety Rules, or the Division [Commission] shall conduct another complete inspection before the vehicle may be placed into LP-gas service.

(c) (No change.)

(d) If the requested Division [Commission] inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, the Division [Commission] shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

*§9.204. Maintenance of Vehicles.*

All LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances shall be maintained in safe working order and in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If any of the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas containers, gas utilization equipment, or appliances is not in safe working order, the Safety Division may require that the vehicle be immediately removed from LP-gas service and not be operated until the necessary repairs have been made.

*§9.208. Testing Requirements.*

Each transport container unit required to be registered with the License and Permit Section of the Gas Services Division (the Section) [Commission] shall be tested in accordance with 49 CFR 180.407, relating to requirements for test and inspection of specification cargo tanks.

The tests shall be conducted by a Category A, B, or O licensee. This section shall not apply to the initial transfer of unregistered units that are tested and transferred from another state. If the test results show any unsafe condition, or if the transport unit does not comply with 49 CFR Parts 100-185, the transport container unit shall be immediately removed from LP-gas service and [The unit] shall not be returned to LP-gas service until all necessary repairs have been made and the Section [Commission] authorizes in writing its return to service.

**§9.211. Markings.**

Each LP-gas transport and container delivery unit in LP-gas service shall be marked on each side and the rear with the name of the licensee or the ultimate consumer operating the unit. Such lettering shall be legible and at least two inches in height and in sharp color contrast to the background. The Safety Division [Commission] shall determine whether the name marked on the unit is sufficient to properly identify the licensee or ultimate consumer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501066

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295



**16 TAC §9.207**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

**§9.207. Requirements for Movable Fuel Storage Tenders Such as Farm Carts.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501067

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295



**SUBCHAPTER D. ADOPTION BY  
REFERENCE OF NFPA 54 (NATIONAL  
FUEL GAS CODE)**

**16 TAC §§9.303, 9.308, 9.312**

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

**§9.303. Exclusion of NFPA 54, §6.31.**

The Commission does not adopt NFPA 54, §6.31, which refers to NFPA 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems. Persons engaging in CNG activities shall comply with the Commission's adopted rules at Chapter 13 of this title (relating to Regulations for Compressed Natural Gas (CNG) [and Liquefied Natural Gas (LNG)]).

**§9.308. Identification of Piping Installation.**

(a) In addition to the requirements of NFPA 54, Part 3, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage [and] tested only by persons properly licensed or certified by the Commission.

(b) Upon completion of the installation, alteration, repair, pressure testing, or leakage [or] testing of an LP-gas piping system, the licensee shall attach to the end of the piping nearest the container a decal or tag of metal or other permanent material indicating the following information:

(1) - (2) (No change.)

(3) the year the piping was installed, altered, repaired, pressure tested, or leakage tested.

(c) (No change.)

**§9.312. Certification Requirements for Joining Methods.**

(a) In addition to the requirements in NFPA 54, §2.6.9, and NFPA 58, §2.4.4.3, and in addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, an individual shall be certified by either the Safety Division (the Division) [Commission] or a person or certification school authorized by the Division [Commission]. The certification shall confirm



that the individual has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501065

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295



## SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

### 16 TAC §9.403

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

§9.403. *Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.*

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules, or with corrections listed in the Errata dated November 19, 2001, issued by NFPA to correct typographical or other errors in the published NFPA 58 pamphlet. According to NFPA, these errors may be corrected in future printings. Figure: 16 TAC §9.403(a)

(b) (No change.)

(c) For rows in Table 1 of this section that refer to "errata," some versions of the 2001 edition of NFPA 58 included errors that were corrected by NFPA in later printings. The Table shows the correct wording.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501064

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295



## SUBCHAPTER F. ADOPTION BY REFERENCE OF NFPA 51 (STANDARD FOR THE DESIGN AND INSTALLATION OF OXYGEN-FUEL GAS SYSTEMS FOR WELDING, CUTTING, AND ALLIED PROCESSES)

### 16 TAC §§9.501 - 9.503, 9.506 - 9.508

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on March 8, 2005.

§9.501. *Adoption by Reference of NFPA 51.*

§9.502. *Clarification and/or Exclusion of Definitions in NFPA 51.*

§9.503. *Exclusion of Certain Sections and Chapters 6, 7, and 8 in NFPA 51.*

§9.506. *Sections in NFPA 51 Adopted with Additional or Alternative Language.*

§9.507. *Container Installation Requirements.*

§9.508. *LP-Gas Pressure Going into a Building.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501063

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Proposed date of adoption: September 1, 2005

For further information, please call: (512) 475-1295

◆       ◆       ◆

## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

#### SUBCHAPTER D. LOTTERY GAME RULES

##### 16 TAC §401.315

The Texas Lottery Commission proposes amendments to 16 TAC §401.315, relating to the "Mega Millions" on-line game. The proposed amendments change the game matrix from 5 of 52 and 1 of 52 to 5 of 56 and 1 of 46. The proposed amendments change the minimum grand/jackpot amount from \$10 million to \$12 million. The proposed amendments also change the second prize level from \$175,000 to \$250,000 and the third prize level from \$5,000 to \$10,000. Additionally, the odds of winning for each prize category as well as the overall odds of winning change. For the grand/jackpot prize category, the odds of winning and the percent of prize fund change from 1:135,145,920 and 63.38% to 1:175,711,536 and 63.6%, respectively. For the second prize category, the odds of winning and the percent of prize fund change from 1:2,649,920 and 13.21% to 1:3,904,701 and 12.8%, respectively. For the third prize category, the odds of winning and the percent of prize fund change from 1:575,089 and 1.74% to 1:689,065 and 2.90%, respectively. For the fourth prize category, the odds of winning and the percent of prize fund change from 1:11,276 and 2.66% to 1:15,313 and 1.96%, respectively. For the fifth prize category, the odds of winning and the percent of prize fund change from 1:12,502 and 2.40% to 1:13,781 and 2.18%, respectively. For the sixth prize category, the odds of winning and the percent of prize fund change from 1:833 and 2.40% to 1:844 and 2.38%, respectively. For the seventh prize category, the odds of winning and the percent of prize fund change from 1:245 and 5.71% to 1:306 and 4.58%, respectively. For the eighth prize category, the odds of winning and percent of prize fund change from 1:152 and 3.96% to 1:141 and 4.26%, respectively. For the ninth prize category, the odds of winning and the percent of prize fund change from 1:88 and 4.54% to 1:75 and 5.34%, respectively. The proposed amendments also change provisions throughout the rule that refer to the number of numbers in either field of numbers. Also, language is added that provides that if the sales support a jackpot that is at least \$12 million lower than the advertised jackpot, the resulting jackpot to be paid will be the highest fully funded million plus \$12 million or the advertised jackpot, whichever is lower. In no event, however, shall the jackpot paid be less than the advertised jackpot of the immediately prior drawing.

Lee Deviney, Financial Administration Director, has determined for each year of the first five years the amendments are in effect there will be the following foreseeable additional fiscal implications for state or local government as a result of enforcing or administering the amended section: FY05, \$4,292,166; FY06, \$18,350,214; FY07, \$16,537,394; FY08, \$14,848,429; and FY09, \$13,288,694. There will be no anticipated economic cost to individuals. There is a small anticipated positive impact on small or micro businesses who sell lottery products; but, no anticipated impact on local or state employment as a result of implementing the amended section.

Robert Tirloni, Products Manager, Lottery Operations Division, has determined that each of the first five years the amendments

as proposed is in effect, the public benefit anticipated as a result of the proposed amendments is additional sales and revenue. Retailers will benefit because they will be receiving additional monies from the additional Mega Millions sales. The State of Texas will receive additional revenue from the additional Mega Millions sales. The amendments are proposed in conjunction with the addition of another state to the game, California. The addition of the population of California to the existing population base of the game may lead to lower jackpot levels unless the game matrix is changed and the odds of winning the grand/jackpot prize are changed. Mega Millions is attractive to players because of the high jackpot levels the game can generate. Texas' actual sales history illustrates that Mega Millions is viewed as a triple-digit jackpot game in the state. In Texas, Mega Millions average per capita sales increase as the Mega Millions jackpot increases. The proposed changes will cause the game to continue to offer high jackpot prize levels to players.

Written comments on the proposed amendments may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments must be received within 30 days after publication in the *Texas Register* to be considered. The Texas Lottery Commission will also conduct a hearing to receive comment on the proposed amendments on April 7, 2005, at 9:00 a.m. at the Commission auditorium, 611 East Sixth Street, Austin, Texas.

The amendments are proposed under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, under Government Code, §466.451 which authorizes the Commission to adopt rules relating to multijurisdiction lottery game or games, and under Government Code, §467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Government Code, Chapter 466 and specifically, Government Code, §466.451.

##### *§401.315. "Mega Millions" On-Line Game Rule.*

(a) (No change.)

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) - (7) (No change.)

(8) Number--Any play integer from one through 56 [52].

(9) (No change.)

(10) Play--The six numbers selected on each play board and printed on the ticket. Five numbers are selected from the first field of 56 [52] numbers and one number is selected from the second field of 46 [52] numbers.

(11) Play board--Two fields, the first field of 56 [52] numbers and the second field of 46 numbers, each found on the playslip.

(12) (No change.)

(c) (No change.)

(d) Play for Mega Millions.

(1) Type of play. A Mega Millions player must select five numbers from the first field of numbers from 1 through 56 [52] and an additional one number from the second field of numbers from 1

through 46 [52] in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick.

(2) - (3) (No change.)

(e) (No change.)

(f) Prizes for Mega Millions.

(1) - (2) (No change.)

(3) Prize categories.

(A) Matrix of 5/56 [5/52] and 1/46 [1/52] with 50 percent estimated prize fund.

Figure: 16 TAC §401.315(f)(3)(A)

(B) Jackpot prize payments.

(i) The portion of the prize money allocated from the current Mega Millions prize pool for the grand/jackpot prize, plus any previous portions of prize money allocated to the grand/jackpot prize category in which no matching tickets were sold and money from any other available source pursuant to a guaranteed first prize amount announcement will be divided equally among all jackpot prize winners in all participating lotteries. Prior to each drawing, the Mega Millions grand/jackpot prize amount that would be paid in 26 annual installments will be advertised. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions play matching all five of the five Mega Millions winning numbers drawn for field 1 and the one Mega Millions winning number drawn for field 2. However, if the sales support a jackpot that is at least \$12 million lower than the advertised jackpot, the resulting jackpot to be paid will be the highest fully funded million plus \$12 million or the advertised jackpot, whichever is lower. In no event, however, shall the jackpot paid be less than the advertised jackpot of the immediately prior drawing. When there is only one winning Mega Millions ticket for the jackpot prize, no grand/jackpot prize paid in 26 annual installments shall be less than \$12 [\$10] million.

(ii) - (vi) (No change.)

(C) Second through ninth level prizes.

(i) Second Prize: Mega Millions plays matching five of the five Mega Millions winning numbers drawn for field 1 (in any order), but not matching the Mega Millions winning number drawn for field 2 shall be entitled to receive a second prize of \$250,000 [\$175,000].

(ii) Third Prize: Mega Millions plays matching four of the five Mega Millions winning numbers drawn for field 1 (in any order) and the Mega Millions winning number drawn for field 2 shall be entitled to receive a third prize of \$10,000 [\$5,000].

(iii) - (ix) (No change.)

(D) - (H) (No change.)

(g) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501106

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: April 24, 2005

For further information, please call: (512) 344-5113

## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

##### 22 TAC §203.29

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Funeral Service Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Funeral Service Commission (Commission) proposes to repeal Title 22, Texas Administrative Code, Chapter 203, §203.29, concerning Funeral Establishment Names.

The repeal of §203.29 is proposed because existing §203.29 is no longer needed because a new rule §203.29 is being proposed to clarify the use of a funeral establishment name.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed repeal of the rule.

Mr. Robbins further has determined that for each of the first five-year period the amended rule is in effect, the public benefit anticipated as a result of enforcing §203.29 will be eliminating the confusion of using a funeral establishment name for a facility which is not licensed by the Texas Funeral Service Commission. There will be no effect on large, small or micro-businesses. The anticipated economic costs to persons who are required to comply with these sections will be no more or less than the costs to establishments under §203.29 before this repeal and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax), or electronically to [chet.robins@tfsc.state.tx.us](mailto:chet.robins@tfsc.state.tx.us).

The amendment to §203.29 is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.29. *Funeral Establishment Names.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2005.

TRD-200501054  
O.C. "Chet" Robbins  
Executive Director  
Texas Funeral Service Commission  
Earliest possible date of adoption: April 24, 2005  
For further information, please call: (512) 936-2466



## 22 TAC §203.29

The Texas Funeral Service Commission (Commission) proposes Title 22, Texas Administrative Code, Chapter 203, §203.29, concerning Funeral Establishment Names.

Section 203.29 is proposed to replace the existing §203.29 which has been repealed due to clarification of the use of a funeral establishment name.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed repeal of the rule.

Mr. Robbins further has determined that for each of the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of enforcing §203.29 will be eliminating the confusion of using a funeral establishment name for a facility which is not licensed by the Texas Funeral Service Commission. There will be no effect on large, small or micro-businesses. The anticipated economic costs to persons who are required to comply with these sections will be no more or less than the costs to establishments under §203.29 before this repeal and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax), or electronically to [chet.robbins@tfsc.state.tx.us](mailto:chet.robbins@tfsc.state.tx.us).

The amendment to §203.29 is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as

authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

### §203.29. Funeral Establishment Names.

(a) Each funeral establishment's application for licensure shall contain the name to be used on the license.

(b) The executive director shall issue the license in the requested name when all licensing requirements are satisfied, unless the director determines that the name is deceptively or substantially similar to the name of another licensed funeral establishment in the same county, metropolitan area, municipality, or service area that objects to the applicant's name choice.

(c) A funeral establishment's name may be changed by following the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may appeal the executive director's denial of the request to the commission. The commission's decision is final.

(e) No funeral establishment may advertise or provide funeral services under a name other than the name on the establishment license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2005.

TRD-200501055  
O.C. "Chet" Robbins  
Executive Director  
Texas Funeral Service Commission  
Earliest possible date of adoption: April 24, 2005  
For further information, please call: (512) 936-2466



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 1. LIBRARY DEVELOPMENT SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

##### 13 TAC §§1.74, 1.81, 1.83

The Texas State Library and Archives Commission adopts amendments to §1.74 and §1.81, and adopts new §1.83, without changes to the text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9481).

The sections address criteria for system membership.

Six comments were received during the comment period.

Four comments were received about §1.83(3) regarding the requirement to participate in the interlibrary loan network by offering to both borrow and lend materials. These comments focused on the provision to lend to other libraries. The comments stated that this provision would be a hardship for smaller libraries, costing them money for postage and supplies, and also staff time to handle this provision. Some asked if this would mean they would incur OCLC costs. They stated that smaller libraries do not have the resources to do this. The comments also stated that the collections of smaller libraries would not have books to lend, except local history, which would not be lent under local policy. They asked if libraries would be required to lend out of state as well as in Texas. One comment said that the State Library would be dictating what services a library must provide, which is not the role of the State Library, and if the Texas State Library is going to require that libraries start offering full interlibrary loan service, training must be made available and no cost to libraries. Two comments also said that the statement in the preamble to the posted rules which said that we had determined there was no fiscal impact for state or local governments was inaccurate because there could be costs.

Agency response: The task force that recommended the rule wanted to emphasize the resource sharing nature of the Texas Library System. The Library Systems Act (§441.122(14)) reads: "'State library system' means a network of library systems, interrelated by contract, for the purpose of organizing library resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state." The proposed rule states that libraries participate by lending as requested, according to the policies of the library. Interlibrary loan in Texas is done through a

system of TexNet centers, except for those libraries that already handle their own interlibrary loans. Interlibrary loan will continue to operate in this way, so libraries are not being asked to set up full interlibrary loan services in local libraries. The TexNet centers fill requests from the collection of the host library or through the OCLC network. Libraries that are not part of the OCLC network are not required to join. The TexNet centers will not regularly ask small libraries to fill requests. Libraries that do not have their holdings in the OCLC network are not likely to be asked to loan, either from other libraries in Texas or from out of state. Libraries may set up loan policies as they see fit, and it is entirely proper to not lend local history materials. In addition, libraries receive funds through system membership that would pay costs incurred. The system staff will assist libraries that need help in establishing policies. The agency believe that libraries may need additional information on interlibrary loan and how it is provided in Texas to fully understand the limited impact this rule will have.

Two comments were received regarding the proposed revised minimum local expenditures/total local expenditures provision in §1.81. Two people, both writing concerning the same library, explained the fiscal situation for their library, stated that they did not believe that the library would be able to meet the raised amount, stated that system membership was important to their library and community, and asked for consideration of this situation. One also asked for consideration of the creation of a classification which would allow such libraries to continue to operate under the present rules, feeling this would show a sincere interest to assist, rather than possibly cause the failure of, small struggling libraries that show the potential of a strong future. Placement in this classification should be permitted only if a library can produce evidence to support the financial hardship and a prognosis that no improvement will be likely.

Agency response: The task force and commission staff carefully analyzed and considered the impact of raising this criterion on current system member libraries. It was noted that this criterion had not been changed for over 25 years, despite the considerable impact of inflation in that time period. The LFY2003 public library annual report data was examined and it was found that approximately 7% of libraries would not be able to reach the raised criterion if it were enacted immediately. This criterion was recognized as both a key criterion in helping raise minimum criterion and also potentially the most difficult for local libraries. This proposed raised criterion is phased in, not taking effect until LFY2007, to give those libraries that do not yet meet the new criterion adequate time to do so, with the active assistance of the system and State Library. Establishing a separate classification for some libraries that would allow them to continue to operate under the existing rules would not be fair to all libraries and would not be in accord with the reasons for raising the criterion. Therefore the agency does not make the requested changes in the rule.

The amendments and new section are adopted under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership.

The amendments and new section affect the Government Code, §441.127.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501115

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: March 31, 2005

Proposal publication date: October 8, 2004

For further information, please call: (512) 463-5459



### 13 TAC §1.83

The Texas State Library and Archives Commission adopts the repeal of §1.83, without changes to the proposal as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9483).

This section addresses criteria for system membership.

No comments were received during the comment period.

The repeal is adopted under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership.

The repeal affects the Government Code §441.127.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501114

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: March 31, 2005

Proposal publication date: October 8, 2004

For further information, please call: (512) 463-5459



## CHAPTER 6. STATE RECORDS

### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

#### 13 TAC §§6.2 - 6.7, 6.9, 6.10

*(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line issue of the March 25, 2005, issue of the Texas Register.)*

The Texas State Library and Archives Commission adopts amendments to §§6.2 - 6.7, 6.9, and 6.10, relating to records retention scheduling by state agencies. Sections 6.2, 6.4, 6.5, 6.7, and 6.9 are adopted without changes to the proposed text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9483). Sections 6.3, 6.6, and 6.10 are adopted with changes to the proposed text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9483).

The amended sections provide that state agencies that have records retention schedules that have been initially certified and then been recertified for two consecutive years be required to submit their schedules for recertification every three years rather than every two years. The amended sections also provide for the method of submission of records schedules for agencies that through legislative action become administratively attached to another agency. The proposed amendments also include a revised Texas State Records Retention Schedule, which establishes minimum retention periods for records common to all state agencies. Although a few retention periods on the schedule have been revised upward to conform to the requirements of the Sarbanes-Oxley Act and a few new series added, most of the changes have been made in response to suggestions for clarification from state agency records management officers and do not involve significant changes to retention periods. Providing for triennial rather than biennial recertification will permit state agencies and commission staff to devote more time to the myriad of issues confronting the management of government records, particularly those in electronic format.

The commission received comments from the Department of State Health Services, the Texas Education Agency, the Employees Retirement System of Texas, the University of Texas System, and the Teacher Retirement System of Texas regarding the proposed amendments. A summary of the comments and the commission's responses follow. The appearance of a five-digit decimal number in a comment or response is the number of the records series in the amended Texas State Records Retention Schedule, which is referred to simply as the schedule.

**Comment:** The Teacher Retirement System of Texas recommends that the requirement for archival review of Calendars, Appointment and Itinerary Records (1.1.013) of executive staff, board or commission members, division directors, and program heads not be added to the schedule. Teacher Retirement System of Texas notes that many calendars are maintained electronically, that it will be cumbersome if selected calendars must be printed for submission to the State Archivist, and that segregating a subset for archival review while purging others will be difficult.

**Response:** The long-term value of calendars, appointment books, and itinerary records must be appraised for each agency and sometimes for each office. In this way, calendars, etc. are equivalent to administrative correspondence, which also requires appraisal at the agency and office levels. The commission knows of no state standards for calendar keeping. Each agency and probably each employee or official keeps a calendar to suit individual needs. At executive and sometimes program levels (each agency operates differently and program level managers can sometimes have more information of long-term value than executives), calendars can record important information about meetings and decisions that is not available elsewhere.

The commission understands that electronic calendars will be more difficult to manage; but, as with electronic administrative

correspondence, control over these records is required to insure that information of long-term value is properly maintained.

Once the State Archivist has determined that certain calendars have no long-term value, the archival code of "E" can be applied. In the meantime, the agencies must maintain electronic calendars and administrative correspondence at the administrative levels noted on the Texas State Records Retention Schedule. Paper calendars and administrative correspondence should be transferred to the State Archives at the close of the retention periods.

Comment: The Teacher Retirement System of Texas suggests that the retention period for Certified Agendas or Tape Recordings of Closed Meetings (1.1.059) be changed from AC + 2 (in which AC means from the date of the meeting or the completion of pending action involving the meeting, whichever later) to FE or CE because the AC retention standard may prove difficult for disposition purposes.

Response: The retention period stated is that set in Government Code §551.104(a). The commission does not have the authority to require a different retention period for a record from that prescribed for the record in a federal or state law, regulation, or rule of court.

Comment: The Teacher Retirement System of Texas notes that Public Access Option Forms (3.1.038) are also included in the description of Former Employee Verification Records (3.3.011). The Teacher Retirement System of Texas suggests that the relationship between the two records series be clarified.

Response: A cross-reference note has been added to 3.1.038 to draw attention to the public access option forms of former employees.

Comment: With regard to Telephone Message Notifications (5.1.016), the Teachers Retirement System of Texas remarked that with the exception of message books and phone logs, other types of notifications are typically not kept separate from the files to which they pertain.

Response: The commission acknowledges the validity of the comment. A message slip associated with an audit, for example, would typically be maintained with other records associated with the audit. The commission believes, however, that the inclusion of message slips and emails in this records series is appropriate to cover those message notifications that are not maintained with another record series.

Comment: The Department of State Health Services pointed out errors in the retention and archival codes that appear at the bottom of many pages of the Texas State Records Retention Schedule.

Response: The errors have been corrected.

Comment: The Department of State Health Services recommends that the word "minimum" be removed from the sentence on page v of the schedule that reads: "This retention schedule indicates the minimum length of time listed records series must be retained by a state agency before destruction or archival preservation." The Department of State Health Services also recommends that the following sentence be removed from page v: "The commission also recommends them as appropriate maximum retention periods." The Department of State Health Services further recommends that the following sentence of page vi of the schedule be deleted: "Retention periods listed in the RRS

are required minimums." The Department of State Health Services contends that these suggested changes would give state agency records management officers more support when faced with program staff who wish to keep records longer than the state requires.

Response: The commission recognizes the problems records management officers encounter when attempting to reduce agency retention periods that exceed those in the Texas State Records Retention Schedule. State law, however, limits the authority of the commission to prescribing "minimum" retention periods. See Government Code §441.185(f).

Comment: The University of Texas System questions whether the amended wording of §6.10 means that agencies who may find there is a value in keeping a records series for a longer period than that prescribed in the state schedule can no longer make that determination.

Response: By law, retention periods prescribed by the commission must be minimum retention periods only. The language in §6.10 has been amended to clarify that the retention periods in the Texas State Records Retention Schedule are minimum retention periods.

Comment: The University of Texas System questions the business value of keeping Software Registrations, Warranties and License Agreements (2.2.026) beyond the life of the asset.

Response: State agencies are now required to conduct periodic audits of their software and are also subject to audit by other agencies on the same matter. Requiring that software licenses be kept for some period after the software is taken out of service serves to protect an agency should it be questioned about its prior use of software.

Comment: Both the Employees Retirement System of Texas and the Texas Education Agency requests that rejected bids be removed from Contracts and Leases (5.1.001), arguing that there is no need to keep rejected bids associated with an accepted bid that results in a contract.

Response: The commission agrees and rejected bids have been removed from Contracts and Leases (5.1.001). Because the purchasing practices of an agency are subject to external audit, rejected bids are now included in Bid Documentation (5.3.007).

Comment: The Teacher Retirement System of Texas and the University of Texas System argue that Internet Cookies (2.2.014) and History Files - Web Sites (2.2.015), included for the first time in the Texas State Retention Schedule, should not be considered records. The University of Texas System submits that these types of information enable a technical process, but do not have any relevance in the history of the transaction of business. Both agencies note the difficulty of documenting the disposition of these records. The University of Texas System suggests that if the records remain in the schedule, that an agency be permitted to treat them as transitory information.

Response: The commission believes that Internet Cookies and History Files - Web Sites meet the definition of a state record because they document the "use of public resources." Both types of records have been requested and produced by agencies under the Public Information Act. Both, particularly History Files, have been used by agencies as the basis for personnel disciplinary action. The retention period for both records has been set at as long as administratively valuable, which affords agencies maximum flexibility in determining a definite retention period. Because of the difficulty likely to be associated with managing the

disposition of these records, the commission has added a comment to both records series that the disposition can be handled in the same manner as the disposition of transitory information, which does not entail the documentation associated with the disposition of other records.

In addition to these comments, the commission corrected a punctuation error by substituting a comma for a semicolon in §6.3(b)(1), re-worded §6.6(c) to put emphasis on a lack of timeliness as an important component in any decision by the director and librarian to decertify an agency's records retention schedule, and added language to §6.10 to identify the amended Texas State Retention Schedule as the third edition of the schedule. The commission also re-worded the archival note to Calendars, Appointment and Itinerary Records to clarify that the note applies to elected state officials also. Subchapter L, Chapter 441, Government Code, a section of which authorizes the commission to adopt these rules, applies to elected state officials as well as state agencies.

The amendments are adopted under Government Code §441.185(e), which authorizes the Texas State Library and Archives Commission to adopt rules relating to the submission of records retention schedules to the state records administrator.

#### *§6.3. Submission of Records Retention Schedules for Recertification.*

(a) After initial certification, a records retention schedule must be submitted to the state records administrator for recertification one year from the date of certification or recertification for the first two recertification periods.

(b) After the second recertification, a records retention schedule must be submitted for recertification every three years from the date of the last recertification, except for the following situations.

(1) If a state agency with a certified schedule absorbs another state agency, the records retention schedule must be submitted for recertification within one year of the effective date of the reorganization, and then will revert, when the schedule is recertified, to annual or triennial certification depending on the certification status of the absorbing agency under this section at the time of absorption.

(2) A state agency may choose to submit a complete retention schedule for recertification at any time during a certification period.

(c) If a state agency with a certified schedule absorbs another state agency with a certified schedule, the records management officer of the absorbing agency may use the certified schedule of the absorbed agency as the basis for disposition of the records of the absorbed agency until the records retention schedule of the absorbing agency is recertified in accordance with this section.

(d) If a state agency with a certified schedule administers another state agency with a certified schedule, the records management officer of the administering agency may use the certified schedule of the administratively attached agency as the basis for lawful disposition of the records of the administratively attached agency until the records retention schedule of the administering agency is recertified in accordance with this section.

(e) A records retention schedule due for recertification under this section must be submitted to the state records administrator no later than one year from the end of the month in which the schedule was certified or last recertified (or three years if the state agency is due for triennial recertification).

(f) At the discretion of the state records administrator and on petition from the records management officer of a state agency that it

will be impossible to comply fully with the requirements of subsection (e) of this section, the state records administrator may extend the deadline for submission of the records retention schedule for up to 3 months from the end of the month the recertification of the schedule was due. One or more additional extensions may be granted, but in no case may the first extension and any additional extensions be for a combined period of more than one year from the end of the month the recertification was due.

#### *§6.6. Decertification.*

(a) If a state agency fails to submit a records retention schedule to the state records administrator for recertification by a required deadline or fails to request an extension, the certification of the currently approved schedule and any approved amendments to the schedule expires one year from the end of the month in which the schedule was initially certified or last recertified (or three years if the state agency is due for triennial recertification).

(b) If a state agency refuses to permit the inspection of a state records series by the state archivist or fails to respond to questions from the state archivist concerning the content, use, or other aspects of a state records series in order for the state archivist to determine if the series contains archival state records in accordance with Government Code, §441.186, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(c) If a state agency fails to cooperate fully and in a timely manner with the commission, the director and librarian, or any other authorized designee of the director and librarian in fulfilling their duties in accordance with Government Code §441.183, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(d) If its records retention schedule is decertified according to this section, a state agency is no longer authorized to destroy records based on the schedule and must submit requests for the destruction of its records in accordance with §6.7 of this title (relating to Destruction of State Records).

#### *§6.10. Texas State Records Retention Schedule.*

A record listed in the Texas State Records Retention Schedule (Third Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501113

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: June 1, 2005

Proposal publication date: October 8, 2004

For further information, please call: (512) 463-5459



## **TITLE 19. EDUCATION**

### **PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION**



CHAPTER 230. PROFESSIONAL EDUCATOR  
PREPARATION AND CERTIFICATION  
SUBCHAPTER G. CERTIFICATION  
REQUIREMENT FOR CLASSROOM TEACHERS

**19 TAC §§230.191, 230.193, 230.194**

The State Board for Educator Certification adopts amendments to the following sections of 19 TAC Chapter 230, Subchapter G: §230.191 relating to Preparation Required in All Programs, §230.193 relating to Teacher Certificate--Secondary, and §230.194 relating to Teacher Certificate--All Level. The proposed amendments to 19 TAC Chapter 230 Subchapter G, Certificate Requirements for Classroom Teachers will provide for SBEC to cease issuing the ExCET-based Secondary Physical Education (Grades 6-12) certificate and the All-Level Physical Education (Pre-kindergarten-Grade 12) certificate on September 1, 2005. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the new corresponding certificate. The amendments will allow for a one-year overlap of the superseded certificates and the new Physical Education certificate, thus providing for the limited availability of current ExCET tests and certificates during the overlap period.

The proposed amendments to §§230.191, 230.193, and 230.194 were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11238). The State Board for Educator Certification received no public comments regarding the proposed amendments. Sections 230.191, 230.193, and 230.194 will be adopted without change.

The amendments to §§230.191, 230.193, and 230.194 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501095

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304



SUBCHAPTER J. CERTIFICATION  
REQUIREMENTS FOR EDUCATORS OTHER  
THAN CLASSROOM TEACHERS AND  
EDUCATIONAL AIDES

**19 TAC §§230.307, 230.311, 230.315, 230.319**

The State Board for Educator Certification adopts the repeals of the following sections of 19 TAC Chapter 230, Subchapter J: §§230.307 Counselor, 230.311 Learning Resources Specialist, 230.315 Special Education Counselor and 230.319 Certification Standards for Vocational Education Supportive Personnel. The proposed amendments repeal those sections of 19 TAC, Chapter 230, Subchapter J that contain the requirements for certificates that have been replaced by new TExES-based certificates

The repeals to §§230.307, 230.311, 230.315, and 230.319 were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11239). The State Board for Educator Certification received no public comments regarding the repeals. Sections 230.307, 230.311, 230.315, and 230.319 are adopted without any changes.

The repeals to §§230.307, 230.311, 230.315, and 230.319 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501099

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304



CHAPTER 232. GENERAL REQUIREMENTS  
APPLICABLE TO ALL CERTIFICATES ISSUED  
SUBCHAPTER A. TYPES AND CLASSES OF  
CERTIFICATES ISSUED

**19 TAC §232.4**

The State Board for Educator Certification adopts amendments to the following section of 19 TAC Chapter 232, Subchapter A: §232.4, relating to Probationary Certificates that would eliminate the requirement that the extension of the Probationary Certificate occur during consecutive years following the expiration of the initial probationary Certificate. Section 232.4(d) describes the validity period of the Probationary Certificate. It allows for the initial Probationary Certificate to be issued for a term of one calendar year. Under current rule, the Probationary Certificate may be extended for no more than two consecutive annual terms based on the alternative certification program's recommendation and verification that the candidate is demonstrating satisfactory progress toward full certification.

Section 232.4 was published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11240). The State Board for Educator Certification received no public comments regarding §232.4. Section 232.4 is being adopted without any changes.

The amendments to §232.4(d) are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501100

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304

## SUBCHAPTER R. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

### 19 TAC §232.830, §232.840

The State Board for Educator Certification adopts the amendments to the following section of 19 TAC Chapter 232, Subchapter R: §232.830 relating to requirements for Certificate Renewal and §232.840, relating to Inactive Status and Late Renewal. The amendments require the holders of standard certificates in certain career and technology areas that require current license, certification or registration as a professional practitioner to maintain the professional credential as a condition for renewal of the standard Texas educator certificate.

Sections 230.830 and 230.840 were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11241). The State Board for Educator Certification received no public comments regarding §230.830 and §230.840. The sections are being adopted without any changes.

The amendments to §232.830 and §232.840 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501102

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304

## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §233.13

The State Board for Educator Certification adopts a new section of 19 TAC Chapter 233: §233.13, relating to Physical Education. The new section of Chapter 233, Categories of Classroom Teaching Certificate will provide for SBEC to issue the new TExES-based Physical Education (Early Childhood-Grade 12) no earlier than September 1, 2004. The new §233.13 will describe the broad curriculum areas or courses identified in the Texas Essential Knowledge and Skills (TEKS) that the holder of the new Physical Education certificate would be prepared to teach. The rule allows for a one-year overlap of the superseded certificates and the new Physical Education certificate, thus providing for the limited availability of current ExCET tests and certificates during the overlap period, 2004-2005.

Section 233.13 was published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11242). The State Board for Educator Certification received no public comments regarding the proposed new section. Section 233.13 will be adopted without any changes.

Section 233.13 is adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501094

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304

## CHAPTER 239. STUDENT SERVICES CERTIFICATES

### SUBCHAPTER E. MASTER TEACHER CERTIFICATE

#### 19 TAC §239.101, §239.103

The State Board for Educator Certification adopts the amendments to the following sections of 19 TAC Chapter 239, Subchapter E: §239.101, relating to Master Reading Teacher Certification and §239.103, relating to Master Technology Teacher Certification. The amendments to §239.101 and §239.103 establish criteria for the assignment of educators who hold the Master Reading Teacher Certificate and the Master Technology Teacher Certificate. The holder of the Master Reading Teacher Certificate will be able to serve as a reading teacher mentor to other teachers and teach reading to students in early childhood through grade 12. The holder of the Master Technology Teacher Certificate will be able to serve as a technology training mentor.

The amendments to §239.101 and §239.103 were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11243). The State Board for Educator Certification received no public comments regarding the proposed amendments. The amendments to §239.101 and §239.103 are being adopted without any changes.

The amendments to §239.101 and §239.103 are adopted under the statutory authority of the following Education Code sections: §21.031(a), which vests State Board for Educator Certification (SBEC) with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and §21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

No other statutes, articles, or codes are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501097

Herman L. Smith, Ph. D

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8309



## CHAPTER 240. AMERICAN SIGN LANGUAGE CERTIFICATE

#### 19 TAC §240.1

The State Board for Educator Certification adopts the amendments to the following section of 19 TAC Chapter 240: §240.1, relating to American Sign Language Certificate. The adopted

amendments will discontinue the current American Sign Language (ASL) secondary (grades 6-12) certificate after the 2005-2006 academic year. The current ASL secondary certificate will no longer be issued after August 31, 2006. In August 2004, the Board created and adopted standards for a new ALS all-level (early childhood through grade 12) certificate that will be issued beginning September 1, 2005. The proposed amendments were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11243). The State Board for Educator Certification received no public comments regarding the proposed rule. Section 240.1 will be adopted without any changes.

The amendments to §240.1 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501096

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304



## CHAPTER 250. AGENCY ADMINISTRATION

### SUBCHAPTER A. PURCHASING

#### 19 TAC §§250.1 - 250.3

The State Board for Educator Certification adopts amendments to the following sections of 19 TAC Chapter 250, Subchapter A: §250.1, relating to Historically Underutilized Business (HUB) Program, §250.2 relating to Ethical Standards, and §250.3 relating to Vendor Protest Procedures. These amendments would amend the rules for SBEC's purchasing program, including those governing purchases from Historically Underutilized Businesses. The proposed rules were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11245). The State Board for Educator Certification received no public comments regarding the proposed amendments. Sections 250.1 - 250.3 are being adopted without any changes.

The amendments to §§250.1 - 250.3 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(a), Education Code, which permits SBEC to propose rules as necessary for its own procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501101

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: March 30, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304

## **TITLE 22. EXAMINING BOARDS**

### **PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS**

#### **CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER A. THE BOARD**

##### **22 TAC §51.3**

The Texas State Board of Barber Examiners adopts an amendment to Rule §51.3 (Administrative Fines) to add fines for violations of the proposed new Rule §51.91 that clarifies the responsibilities of barber shop and specialty shop owners and managers in regard to verifying the licenses and permits of all employees and independent contractors (booth renters) who engage in barbering in the shop. The fine for allowing an independent contractor without a license or a booth rental permit to engage in barbering in a shop would be \$500 for the first offense, \$750 for the second offense, and \$1,000 for the third and subsequent offenses. The fines for allowing an employee or independent contractor to engage in barbering with an expired license or an expired booth rental permit would be \$100 for the first offense, \$300 for the second offense, and \$500 for the third and subsequent offenses. The amendment to §51.3 is adopted without changes to the proposed text as published in the January 14, 2005, issue of the *Texas Register* (30 TexReg 69) and will not be republished.

The amendment is adopted to increase compliance by licensees and permit holders with the statutes and rules under which they are regulated and help ensure that all individuals engaged in barbering in a barber shop or specialty shop have the appropriate current licenses and permits issued by the Board.

No comments were received on the proposed amendment to the rule.

This amendment is proposed under the Texas Occupations Code Chapter 1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties, and under TOC Chapter 1601.155 which provides the Board with the authority to set fees, and under TOC Chapter 1601.701 which provides the Board with the authority to impose administrative penalties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501121

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Effective date: March 31, 2005

Proposal publication date: January 14, 2005

For further information, please call: (512) 936-6333

## **SUBCHAPTER D. BARBER SHOPS**

### **22 TAC §51.93**

The Texas State Board of Barber Examiners adopts an amendment to Rule §51.93 Sanitation Rules for Barber Shops and Barber Schools and Colleges to require that each chair or station in a barber shop have its own jar or container of liquid sterilizer for use in sterilizing combs, brushes, clipper guards, or other appropriate implements between use. The amendment is adopted without change to the proposed text as published in the January 14, 2005 issue of the *Texas Register* (30 TexReg 68) and will not be republished.

The action is adopted to protect the public from the potential spread of disease or other health hazards that may be spread through the use of unsanitary or non-sterilized equipment or implements.

No comments on the proposed rule changes were received.

The amendment is adopted under the Texas Occupation Code Chapter 1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501120

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Effective date: March 31, 2005

Proposal publication date: January 14, 2005

For further information, please call: (512) 936-6333

## **PART 14. TEXAS OPTOMETRY BOARD**

### **CHAPTER 277. PRACTICE AND PROCEDURE**

#### **22 TAC §277.6**

The Texas Optometry Board adopts amendments to §277.6 without changes to the proposed text as published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11458).

The amendments raise the maximum amount for administrative penalties for violations of specific sections of the Texas Optometry Act and Rules. The amendments add a maximum penalty for failing to respond to the Board's inquiry in the time period permitted by Rule §277.1.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.551 and 351.552. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.551 and §351.552 as authorizing the imposition of administrative penalties by the Board according to provisions set out in the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501091

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: March 30, 2005

Proposal publication date: December 10, 2004

For further information, please call: (512) 305-8502



## CHAPTER 279. INTERPRETATIONS

### 22 TAC §279.10

The Texas Optometry Board adopts new §279.10 without changes to the proposed text as published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11459).

The new rule clarifies the statutory requirements for professional identification of an optometrist's practice. The new rule distinguishes between temporary relief or fill-in doctors and doctors who practice at a location on a regular basis.

No comments were received.

The new rule is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.458, and 351.362. No other sections are affected by the new rule.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.362 requires an optometrist to post his or her name so that it is visible prior to the entry into the optometrist's office. The agency interprets §351.458 as prohibiting an optometrist from posting his or her name if the optometrist does not regularly practice in that office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2005.

TRD-200501092

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: March 30, 2005

Proposal publication date: December 10, 2004

For further information, please call: (512) 305-8502



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§114.6, 114.312, 114.314 - 114.316, 114.318, and 114.319. Sections 114.6, 114.312, 114.314 - 114.316, and 114.319 are adopted *with changes* to the proposed text as published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12098). Section 114.318 is adopted *without change* to the proposed text and will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In April 2000, the commission adopted rules establishing requirements for low emission diesel (LED), and requiring that only LED be sold for on-road and off-road use in the Dallas/Fort Worth (DFW) nonattainment counties as part of that area's ozone attainment demonstration SIP. These new diesel fuel standards were to go into effect May 1, 2002. In December 2000, the commission adopted amendments to the LED rules expanding their coverage to the entire state and made the diesel fuel content limits for sulfur more stringent than federal diesel fuel regulations for on-road vehicles. The commission submitted, as part of that SIP revision, a waiver in accordance with 42 United States Code (USC), §7545(C)(4)(c) for the on-road portion of the rules. The EPA granted the waiver on November 14, 2001 (66 FR 57197), as part of EPA's approval of the SIP revision. Subsequent to this adoption, the 77th Legislature, 2001, passed House Bill (HB) 2912, Article 15, which amended the Texas Clean Air Act (TCAA), §382.039(g) - (i) to restrict the commission from requiring distribution of LED as described in the revised SIP prior to January 1, 2005, and to allow the commission to consider, as an alternative method of compliance with LED standards, fuels to achieve equivalent emission reductions. The commission, in September 2001, adopted amendments to the LED rules implementing the changes required by HB 2912, Article 15. At the direction of the EPA and in order to reduce nitrogen oxide (NO<sub>x</sub>) emissions necessary for the Houston/Galveston/Brazoria (HGB) area to demonstrate attainment with the ozone national ambient air quality standards (NAAQS), these amendments also limited the coverage area of the LED rules from statewide to those counties previously included in the regional air pollution control strategy for the HGB nonattainment area. Under the current rules, on and after April 1, 2005, a person who sells, offers for sale, supplies, offers for supply, dispenses, transfers, allows the transfer, places, stores, or holds any diesel fuel in a stationary tank, reservoir, or other container will be allowed to sell only LED or an approved alternative in the affected areas of the state. These rules apply to the HGB, DFW, and Beaumont/Port Arthur (BPA) nonattainment areas, as well as all counties along Interstates 35 and 37 and to the north and east of those highways.

The current rules allow the use of alternative diesel formulations that have been shown to provide equivalent emission reductions,

and specify the tests that can be used to demonstrate equivalence. The current rules also permit an entity regulated by the rule to use other diesel formulations if the entity submits a plan detailing how the entity will obtain equivalent reductions using a fuel strategy. The current rules also require producers of LED or alternative formulations of LED to register with the commission by December 1, 2004, or 30 days prior to beginning production.

On August 4, 2004, the commission received a petition for rulemaking by the Texas Petroleum Marketers and Convenience Store Association (TPCA). The petitioner requested that the commission extend the compliance date for LED to October 1, 2006, and to June 1, 2007, for the ultra low sulfur requirement. The commission responded by directing staff to initiate rulemaking to extend the compliance date for LED to October 1, 2005, and to strengthen registration requirements and improve the rules' enforceability. The commission also directed staff to include updates and corrections to references included in the rules.

This rule adoption implements the commission's direction in response to the petition for rulemaking. The commission adopts amendments to these rules to postpone the compliance date to October 1, 2005.

The commission also adopts amendments to add flexibility to the requirements for demonstrating that an alternative formulation is equivalent to LED, and to restructure the registration requirement to provide the commission with better and more timely information regarding the planned production of LED. The commission adopts amendments to establish a compliance date phase-in schedule, to remove the sulfur content requirements, to revise the monitoring and testing requirements to improve rule enforceability, and to reflect new compliance methods such as additive-based strategies. Also, revisions are adopted to require all producers and importers of diesel fuel to register with the commission by May 1, 2005, as to their plans to produce LED. Finally, the commission adopts amendments to update several references included in the rules and to delete specific references to test methods in order to be consistent with EPA test methods.

By providing additional methods of compliance and a short postponement of the compliance date, these changes lower the cost of compliance with the rules, while providing the commission with more assurance that diesel supplies will be adequate, and that the commission will have the information and authority necessary for equitable and effective enforcement of the rules.

## SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules.

### *Subchapter A: Definitions*

The adopted amendment to §114.6, Low Emission Fuel Definitions, contains revisions to the definition of diesel fuel. The adopted amendment to the definition of diesel fuel replaces "Number" with "Grade No." for better consistency with common or commercial terms and replaces the language referencing American Society for Testing and Materials (ASTM) Test Method D975-98b with "the active version of ASTM D975 (Standard Specification for Diesel Fuel Oils)." This adopted revision is necessary to promote consistency with widely recognized national standards. ASTM International is a voluntary standards development organization made up of over 30,000 members representing producers, users, consumers, government, and

academia. ASTM members set consensus standards for their respective industries. Finally, the adopted definition of diesel fuel exempts the lubricity testing requirements listed in ASTM D975, since the LED rules do not regulate lubricity. The definition of further process was amended, at adoption, to include the phrase "or addition of an approved additive." While it was the commission's intent that the term "blending" include the addition of additives, the added phrase provides additional clarity to the definition.

### *Subchapter H: Low Emission Fuels*

#### *Division 2: Low Emission Diesel*

The adopted amendment to §114.312, Low Emission Diesel Standards, removes the sulfur content requirements in subsection (b). These requirements are no longer needed in the state LED rules, since the federal sulfur regulations have now been promulgated to reduce sulfur in diesel fuel used in on-highway motor vehicles beginning in June 2006 and in non-road equipment, locomotives, and marine engines beginning in June 2007. The remaining subsections in §114.312 have been relettered accordingly. The adopted revisions to relettered subsection (e), concerning the automatic acceptance of diesel fuel approved by the California Air Resources Board (CARB), clarify that, to satisfy the requirements of subsection (a), a formulation must either have been approved by an executive order of the CARB on or before January 18, 2005, for compliance with California diesel fuel regulations that were in effect as of October 1, 1993, or be compliant with adopted CARB regulations that were in effect as of January 18, 2005. Diesel fuel produced under any of the CARB small refinery compliance measures will not be accepted as LED. Formulations approved by the CARB after January 18, 2005, may be approved under revised and relettered subsection (f). Adopted revisions to subsection (f) will provide the executive director additional discretion when evaluating and accepting diesel fuel formulations approved by the CARB. The discretion provided to the executive director for approval of alternative diesel fuel formulations is also clarified by deleting the reference to also require approval from the EPA. Under these adopted revisions, any producer of an alternative diesel fuel formulation having a post-January 2005 approved CARB executive order for a Certified Diesel Fuel Formulation or a fuel compliant with adopted CARB regulations that were adopted after January 18, 2005, could provide the executive order or fuel content of the components of the compliant fuel to the executive director for consideration in satisfying the emission and performance testing requirements in §114.315(c) and (d) as required by subsection (f). The amendment also removes redundant and unnecessary language regarding proprietary and/or confidential information submitted by the producer of an alternative diesel fuel formulation.

The adopted amendment to §114.314, Registration of Diesel Producers and Importers, contains revisions requiring all producers and importers that now provide diesel fuel for ultimate use in the affected 110 counties, as of April 1, 2005, to register with the executive director no later than May 1, 2005. The language previously in §114.314 only required those producing and importing LED to register. This adopted revision is necessary to provide more comprehensive data on the future quantities of both LED and non-LED fuel being supplied into the affected area. The additional data will allow the commission to develop more effective enforcement strategies for the rule, if necessary. This data can also be used for analysis of any possible withdrawal of producers or importers from the diesel fuel market within the

affected counties and subsequent supply shortages that could occur. This section is restructured into subsections and paragraphs. Adopted new subsection (b) requires producers and importers that are new to the market in the listed counties, after April 1, 2005, to register at least 30 days prior to the first date of providing diesel fuel for use in the listed counties. As with all commission rules, failure to comply with a notification requirement could lead to an enforcement action against the noncompliant company. Adopted new subsection (c) moves language regarding the prescribed forms for registration to its own subsection. This adopted subsection also includes added language specifying what information the producer or importer must provide in the registration. This information includes: a statement signed by the producer or importer indicating whether the producer or importer does or does not intend to produce or import LED compliant diesel on or after October 1, 2005; a statement of the total number of barrels of diesel fuel produced or imported in the 12 months prior to the date of registration that the producer or importer sold, offered for sale, supplied, or offered for supply from its production facility or import facility; a statement of the estimated total number of barrels of LED diesel that the producer or importer is planning to produce or import in the 12 months following the compliance date that the producer or importer intends to sell, offer for sale, supply, or offer to supply from its production facility or import facility for affected counties; a statement of the estimated total number of barrels of diesel fuel that the producer or importer is planning to produce or import under an alternative emission reduction plan in the 12 months following the compliance date that the producer or importer intends to sell, offer for sale, supply, or offer to supply from its production facility or import facility for use in the affected counties; any other information determined by the commission to be necessary to determine the adequacy of diesel supply in the affected counties; and finally, a statement of consent signed by the registrant that the executive director is permitted to collect samples and access documentation and records. Section 114.314(d) was amended by replacing the term "suppliers" with the more appropriate phrase "producers and importers."

The adopted amendment to §114.315, Approved Test Methods, revises subsection (a), at adoption, to specify that compliance with the diesel fuel content requirements of this division must be determined by applying the appropriate test methods and procedures specified in the most current version of ASTM D975 (Standard Specification for Diesel Fuel Oils) and the other listed supplementary methods, which are the aromatic and polycyclic hydrocarbon content determined by the active version of ASTM Test Method D5186; the nitrogen content determined by the active version of ASTM Test Method D4629; the American Petroleum Institute (API) gravity index determined by the active version of ASTM Test Method D287; the viscosity determined by the active version of ASTM Test Method D445; the flashpoint determined by the active version of ASTM Test Method D93; and the distillation temperatures determined by the active version of ASTM Test Method D86. This adopted revision is necessary to ensure the use of the most accurate testing methods and to promote consistency with widely recognized national standards.

The adopted amendment to §114.315(b) allows modifications to the test methods specified in this section if approved by the executive director. This adopted revision allows the executive director greater flexibility in approving modified or alternative test methods.

The adopted amendment to §114.315(c) clarifies and updates existing references and provides additional flexibility in the

testing of alternative formulations. The adopted revision to §114.315(c)(1)(C) clarifies the diesel grades and sulfur content of the reference fuel for the testing of alternative formulations. Adopted revisions to §114.315(c)(1)(C) and also to §114.315(c)(4) replace or add language to reference the active version of the appropriate test methods or procedures rather than the date-specific versions. These revisions will ensure the use of the most accurate and up-to-date testing methods or procedures by ASTM or EPA. There is not a standard for lubricity in the LED rules, therefore, testing for lubricity is not required. Since the sulfur requirements have been removed from §114.312, revisions to §114.315(c)(3)(A) set the sulfur limit of the reference fuel at a maximum value of 15 parts per million (ppm). This limit matches the federal on-highway sulfur requirement. At adoption, the revision to §114.315(c)(4)(C) provides additional flexibility in the testing of new diesel formulations under §114.312(f) by amending the test sequences to now include sequences for when testing with cold and hot start exhaust emission testing cycles and sequences for when only testing with hot start exhaust emission test cycles, which include a new sequence for testing formulations that require an extended duration conditioning cycle, and allowing other test sequences to be approved at the discretion of the executive director. The adopted revision to §114.315(c)(4)(D) eliminates the need for parties conducting the testing of alternative diesel fuel formulations to contact the executive director by telephone and in writing when any unscheduled interruptions or delays occur during testing. At adoption, §114.315(c)(4)(E) and (5)(A) and (d) was amended by replacing the phrase "volatile organic compounds (VOC)" with the phrase "total hydrocarbons (THC), non-methane hydrocarbons (NMHC)." The measurement of THC and NMHC is typically conducted in exhaust emissions testing as a means to determine overall VOC emissions. At adoption, the revisions to §114.315(c)(5) also include a new formula that specifies the measurement tolerances per pollutant type that will be acceptable when calculating the determination of whether the emissions generated by a candidate fuel are comparable to the emissions generated by the reference fuel. The revision to §114.315(c)(6) adds a consultation with the EPA into the process to approve an alternative fuel formulation.

The adopted amendment to §114.315(d) eliminates the language "the formulations are intended only for use in non-road equipment and, through emissions and performance testing with supporting data," which will allow alternative diesel fuel formulations to be approved, as specified in this subsection, for all compression-ignition engines. The revision adopted in §114.315(d) adds requirements for what must be included in the application for approval of alternative diesel fuel formulations using additives. Adopted new paragraph (1) outlines that the application provided to the executive director must include the identity, chemical composition, and concentration of each additive used in the formulation, and the test method by which the presence and concentration of the additive may be determined. Adopted new paragraph (2) outlines what will be included in the executive director's approval notification of an alternative diesel fuel formulation. The adopted paragraph requires an approval notification to identify the total aromatic hydrocarbon content, cetane number, and other parameters as appropriate and as determined in accordance with the test methods identified in §114.315(a). For alternative diesel fuel formulations using additives, the adopted paragraph requires the approval notice to specify, at a minimum, the identity, the minimum concentration, and the treatment rate of the additives used, along with the minimum specifications for the base fuel to be used

in the approved formulation as determined by the test method identified in §114.315(d)(1). Adopted new §114.315(d)(2)(B) adds language stating that the executive director will assign an identification number to the approved alternative diesel fuel formulation for better tracking purposes.

The adopted amendment to §114.316, Monitoring, Recordkeeping, and Reporting Requirements, reformats this section at adoption. Relettered subsections (c), (d), (e), and (h) remove the requirement to sample for sulfur content. Relettered subsection (d) was further amended to clarify the sampling and testing intervals for the producer or importer of LED by retaining the term "each final blend." The adopted revisions to relettered subsections (d) and (e) also alter the frequency and compounds required to be analyzed to ensure appropriate sampling for additive-based alternative formulations. For producers and importers that blend the diesel fuel components of the approved alternative diesel fuel formulation to produce a final blend of LED directly to pipelines, tank ships, railway tank cars, or trucks and trailers, the loading must be sampled and tested at a rate of one sample and test per 250,000 gallons of LED produced. Records must be maintained for two years from the date of sampling, including, but not limited to: sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the content of the appropriate fuel components. At adoption, relettered subsections (d) and (e) were revised to be consistent with relettered subsection (c), in that all diesel fuel produced and not tested as LED by the producer or imported as required by the requirements of this division, will be deemed to exceed the standards specified in this division, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits. At adoption, relettered subsection (e), concerning approved blended fuels that contain an additive system was amended to require that the final blend must be sampled and tested for the content of the appropriate fuel components of the base fuel and additive as listed in the approval notification. Specifically, the producers or importers records must be such that it is shown that sufficient additive was added to maintain the appropriate additive concentration. However, if the additive is approved by the commission for use with diesel fuel produced to comply with the fuel content standards of 40 Code of Federal Regulations (CFR) §80.510, the testing for the content of the fuel components of the base fuel is not required.

The adopted amendment to relettered §114.316(f) revises the number of days required to submit requested information from five days to 15 days.

The adopted revision to relettered §114.316(g) provides alternative certification statements depending on the type of fuel produced or supplied. The certification statements required in subsection (g) were simplified, requiring statements of either: 1) "This product is Texas low emission diesel and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel"; 2) "This product may not be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel without further processing"; or 3) "This product has been produced under a TCEQ approved alternative emission reduction plan and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel." At adoption, the sulfur content recordkeeping requirement was removed from relettered §114.316(h)(2). The adopted amendments to relettered §114.316(i) and (k) replace the requirement to submit quarterly reports "no later than the 15th day of the month following the end of the calendar quarter" to "no later than the 45th day following the end of the calendar quarter."

The adopted relettered §114.316(j) now requires producers or importers that are supplying compliant fuels under either an executive order issued by CARB or by complying with adopted CARB regulations, to supply a copy of the executive order or documentation demonstrating that the fuel meets all of the CARB regulations.

The adopted relettered §114.316(k) now requires those producers with an approved alternative emission reduction plan to submit quarterly reports to the commission no later than the 45th day following the end of the quarterly report, including diesel fuel and additive volumes. At adoption, amendments to subsection (k) also require producers with an approved alternative emission reduction plan to sample and test for the appropriate fuel components of the diesel upon which their projected emission reductions were based. Sampling and testing for particular components which are not part of the alternative emission reduction plan are not required. These quarterly reports will provide needed enforcement requirements that were previously not detailed in §114.318 but simply included as the language "contain adequate enforcement provisions," which is now deleted. The quarterly reports must provide, at a minimum: the volume of diesel fuel produced that is subject to the provisions of the alternative emission reduction plan; the volume of diesel fuel that was not produced by the producer but was sold or supplied by the producer in the affected counties and is subject to the provisions of the alternative emission reduction plan as approved by the executive director; the identity of the persons(s) from whom such diesel fuel was acquired; the date(s) that it was acquired; the volume of additive (if any) utilized by the producer to produce diesel fuel that is subject to the provisions of the alternative emission reduction plan as approved by the executive director; and the identity of the additive and additive manufacturer.

The adopted amendment to §114.318, Alternative Emission Reduction Plan, restructures the section into four subsections for added clarity and revises language. Adopted subsection (a) states that an approved alternative emission reduction plan will only satisfy the requirements of §114.312(a) and not the entire division. Adopted subsection (b) states what must be demonstrated in the alternative emission reduction plan in order to be approved by the executive director. Due to the adopted revisions in §114.316, which added needed enforcement requirements that were previously not detailed in §114.318, the language "contain adequate enforcement provisions," has been deleted. Adopted subsection (c) contains the current language on applicant's use of early reductions. Finally, adopted subsection (d) adds to the current language that the executive director approval of an alternative emission reduction plan must occur prior to the use of that plan for compliance with the requirements of this section.

The adopted amendment to §114.319, Affected Counties and Compliance Dates, extends the initial compliance date of April 1, 2005, to October 1, 2005. This revision allows the commission to more accurately determine the supply of LED into the affected counties once implemented and to identify appropriate investigation and enforcement strategies. This six-month extension to the compliance date, combined with the revisions to §§114.314, 114.315, 114.316, and 114.318, should enable the commission to more accurately analyze the supply of diesel fuel to the affected counties. Furthermore, at adoption, §114.319 was revised to establish a phase-in schedule for the implementation of the LED rules. Producers and importers must be in compliance with the LED rules, beginning on October 1, 2005. Bulk plant distribution facilities must be in compliance with the LED rules



by November 15, 2005. Retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons must be in compliance with the LED rules by January 1, 2006. This new schedule is congruent with compliance schedules established for federal diesel fuel rules and will allow the distribution system to better adjust to the LED requirements.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§114.6, 114.312, 114.314 - 114.316, 114.318, and 114.319 extend the initial compliance date for the LED standards by six months. In addition, the rulemaking enhances enforcement of, and provides needed flexibility in, the LED air pollution control program as part of the strategy to reduce emissions of NO<sub>x</sub> necessary for the counties in the HGB, BPA, and DFW nonattainment areas to be able to demonstrate attainment with the ozone NAAQS. While this strategy is intended to protect the environment by reducing NO<sub>x</sub> emissions that help form ozone, the commission does not find that the additional diesel fuel producers and importers covered by this rulemaking comprise a sector of the economy, or that the revisions will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW, HGB, and BPA nonattainment areas.

The adopted amendments to Chapter 114 are not subject to the regulatory analysis provisions of §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the LED fuel requirements in Chapter 114 were initially developed as part of the control strategy to meet the one-hour ozone NAAQS set by the EPA under the Federal Clean Air Act (FCAA), 42 USC, §7409, and therefore meet a federal requirement. The LED rules are also part of the state's strategy to meet the eight-hour ozone NAAQS. The amendments to this chapter were developed in order to strengthen and provide flexibility in meeting the LED requirements, and were also developed as a result of a petition for rulemaking by the TPCA to extend the compliance date of the LED standards. The FCAA, 42 USC, §7410, requires states to adopt and submit a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such

as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq.* does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq.*, recognized that the states are in the best position to determine what programs and controls are necessary or appropriate to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

As discussed earlier in this preamble, this rulemaking action implements requirements of 42 USC, §§7401 *et seq.* There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.019, 382.202, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purposes of this strategy are to achieve reductions of NO<sub>x</sub> emissions to reduce ozone formation in the HGB, BPA, and DFW nonattainment areas and help bring these areas into compliance with the air quality standards established under federal law as NAAQS for ozone. The adopted amendments extend the initial compliance date for the LED standards by six months. In addition, the rulemaking enhances enforcement of, and provides needed flexibility in, the LED air pollution control program by adding enforcement provisions to the alternative emission reduction plan requirements, allowing new NO<sub>x</sub> calculation models developed by EPA to be used to determine equivalency of alternative diesel fuel formulations to LED standards, and strengthening registration requirements in order to collect more comprehensive data on diesel supply in Texas. These amendments will not place a burden on private, real property because this action does not require an investment in the permanent installation of new refinery processing equipment.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. The emission limitations and control requirements

within this rulemaking action as part of the LED air pollution control program were developed in order to meet the one-hour ozone and eight-hour NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Attainment of the one-hour and eight-hour ozone standards will eventually require reductions in NO<sub>x</sub> emissions as well as VOC emissions. This rulemaking is only one step among many necessary for attaining the ozone standards.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the HGB, BPA, and DFW areas exceeding the federal one-hour and eight-hour ozone NAAQS, that adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by reducing ozone levels in these nonattainment areas and 95 central and eastern Texas counties. Consequently, these adopted rules meet the exemption in §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the adopted rules do not constitute a takings under Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the adopted amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The adopted rulemaking and SIP revision will ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 114 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 114 requirements at their sites affected by the revisions to Chapter 114.

#### PUBLIC COMMENT

The public hearing for this rulemaking was held on January 18, 2005 in Austin. The following persons submitted written or oral comment: Capital Area Council of Governments (CAPCO); CITGO Petroleum Corporation (CITGO); Bullard Environmental Coating, Inc. on behalf of Direct Fuels, Inc. (Direct Fuels); Flint Hills Resources, LP (FHR); Good Company Associates (Good Company); Magellan Midstream Partners (Magellan); ORYX Energy International, Inc. (ORYX); Sierra Club, Houston Regional Group (Sierra); Lloyd Gosselink on behalf of Texas Mining and Reclamation Association and SouthWestern Brick Institute (TMRA/SWBI); Texas Oil and Gas Association (TxOGA); Texas Petroleum Marketers and Convenience Store Association (TPCA); Representative Vicki Truitt, District 98 (Representative Truitt); EPA; and Valero Energy Corporation (Valero).

#### RESPONSE TO COMMENTS

TPCA generally supported the direction of the proposal. CAPCO and Sierra generally opposed the proposal. Direct Fuels, CITGO, FHR, Good Company, ORYX, Sierra, TMRA/SWBI, TxOGA, TPCA, Representative Truitt, EPA, and Valero expressed concerns and/or suggested changes to the proposal.

##### *Repeal Rule*

CITGO and TxOGA expressed their opposition to the LED rules requiring a unique "boutique" set of fuel specifications for diesel fuel in East Texas because these fuels invariably lead to price spikes and supply disruptions and are a very cost-ineffective way to reduce NO<sub>x</sub> and potentially ozone in the HGB and DFW nonattainment areas. TxOGA recommended the repeal of this rulemaking along with action to make those regulated parties that took action to make cleaner diesel fuel in Texas whole. Magellan commented that the additional tankage needed for its infrastructure to handle an additional diesel fuel such as LED is estimated to cost approximately \$10 million. CITGO encouraged the state to accept a federal fuel and seek the required NO<sub>x</sub> reductions in other areas.

The concerns raised by these commenters were addressed in previous rulemakings for the LED rules adopted by the commission on December 6, 2000, and September 26, 2001. These comments do not specifically address changes to the rules associated with this rulemaking. The commission made no changes in the rule language in response to these comments.

FHR commented that the commission should repeal the sulfur requirements in §114.312(b) and §114.319(c), thereby leaving sulfur regulated by federal rules, since the EPA has finalized both on-road and non-road sulfur requirements.

The commission agrees that the suggested change is appropriate and changed the rule accordingly. The EPA promulgated federal rules regulating a reduction in sulfur content for diesel fuel used in on-highway motor vehicles in the January 18, 2001, issue

of the *Federal Register* (66 FR 5002) and then additionally in the June 29, 2004, issue for diesel fuel used in non-road equipment, locomotives, and marine engines (69 FR 38958). Since earlier reductions of the sulfur content in diesel fuel have no impact on NO<sub>x</sub> emissions from diesel engines that are not equipped with emission control devices that can be damaged by sulfur contamination, the commission has elected to amend the rules to allow producers and importers to conform with federal requirements and compliance dates.

#### *Implementation Delay*

CAPCO and Sierra were opposed to the delay of the LED implementation date due to the attainment needs of the early action compact (EAC) areas and the HGB ozone nonattainment area. CAPCO further commented that if the compliance date is delayed, it should not be delayed past August 2005.

The commission believes that the extension of the compliance dates for LED will not impact attainment demonstrations for the HGB area for the one-hour ozone NAAQS or attainment of the eight-hour NAAQS for the EAC and HGB areas. The commission notes that the delay in compliance dates is adopted in order to avoid a lack of LED supply and to allow time for additives and alternative formulations to be introduced into the market. This short time delay should promote the introduction of LED and LED compliant fuels into the Texas market and produce the NO<sub>x</sub> emission reductions necessary for these areas to attain the NAAQS on schedule. Additionally, the commission expects that some reductions will occur despite the delay due to alternative reduction plans and other commitments, which are already in place. The commission made no change to the rules in response to these comments.

TPCA supported the proposed delay in implementation date but expressed concern that given the ambiguity of several of the proposed rule components, the October 1, 2005, deadline may still not provide sufficient time for the production and distribution of commercially reasonable supplies of LED.

The commission appreciates the support. The commission is confident that the adopted changes made to the rules will allow adequate supplies of LED compliant fuel to be produced and distributed into the Texas market.

CITGO, FHR, TPCA, TxOGA, and Valero suggested that the implementation schedule in §114.319 be revised to incorporate a phased-in implementation schedule similar to EPA's diesel fuel rules for both the initial implementation date of the rule and the subsequent 15 ppm sulfur phase-down requirement, resulting in a 45-day transition period between distribution levels at each of these program milestones, with the compliance deadline at the retail outlets and wholesale purchaser-consumers facilities occurring 90 days after the refinery implementation date.

The commission agrees and made changes to the rule in response to these comments. The implementation schedule was revised to incorporate a phased-in implementation schedule that requires producers and importers to comply with the rule beginning on October 1, 2005, bulk plant distributions facilities beginning November 15, 2005, and retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons in the affected counties beginning January 1, 2006.

EPA requested that the commission explain, in the final adoption package, how changing the implementation date to October 1, 2005, is still expeditious as practicable for implementation.

As stated in the proposal published in the *Texas Register* on December 31, 2004, the commission believes that postponing the compliance date of the LED requirements by six months will provide more assurance that diesel supplies to East Texas will be adequate. The commission heard testimony from the petitioner that their fuel suppliers warned of a potential shortage of diesel fuel in the East Texas market. In addition, the commission believes that the extension will allow the entry of newly developed additives and alternative diesel formulations into production, thereby adding more assurance that end-users in Texas will have access to LED compliant fuel. At the commission's October 13, 2004, public meeting, representatives of the additive fuel industry provided information indicating progress was being made in getting their product to market. Based on this testimony, the commission is confident that an additional few months will allow adequate LED compliant diesel fuel to be produced and supplied into the Texas market. The commission made no change to the rules in response to these comments.

TMRA/SWBI and TPCA commented that §114.319 should contain a provision allowing the commission to delay or suspend enforcement of the rules if it is determined that a potential imbalance of supply and demand of LED is shown. TMRA/SWBI further suggested that the provision should automatically extend the implementation date of the LED rule to April 1, 2006, if the commission determines that the registrations received by May 1, 2005, indicate that an adequate supply of LED compliance diesel fuel is not available for use in the affected counties from October 1, 2005, to September 30, 2006.

The commission declines to make the suggested change. The commission is confident that the adopted changes made to the rule will allow adequate supplies of LED compliant diesel fuel to be produced for and distributed into the Texas market beginning on October 1, 2005. In addition, the adopted changes to the registration requirements of the rule will provide the commission with sufficient information to determine whether an adequate supply of LED compliant fuel is expected to be available for use in the affected counties well before the start of the new compliance date phase-in schedule that begins on October 1, 2005.

#### *Definitions*

CITGO, FHR, and TxOGA supported the revised reference for the most current version of ASTM D975 in both the definition of diesel fuel in §114.6 and in §114.315(c)(1)(C). However, CITGO and TxOGA strongly recommended that the commission exclude the new lubricity standard included in ASTM D975 from these rules until the 15 ppm sulfur requirements go into effect in June 2006.

The commission appreciates the support and made changes to both the §114.6 definition and §114.315(c)(1)(C) to exclude the specification for lubricity, since the commission has not established a specific limit for lubricity in diesel fuel.

FHR supported the reference to current ASTM test methods and specification naming conventions in the definition of "Diesel fuel" in §114.6 since the change in definition does not imply that diesel fuel supplied in the State of Texas is required to meet the specifications of the current version of ASTM D975, but is merely for the purpose of specifying what is meant when the rules refer to "Diesel Fuel."

The commission appreciates the support.

Valero commented that the definition of "Further process" in §114.6(9) should be expanded to clarify that the addition of an

approved additive (CARB or TCEQ) at the truck rack is included in the definition of further processing. Valero suggested that the following phrase be added to this subsection: ". . . or addition of an approved additive under section 114.312 (f) or (g), . . ."

The commission agrees and made changes to the rule in response to these comments. The phrase "or addition of an approved additive," was added to the definition of "Further process" in §114.6.

ORYXE commented that §114.6 should be revised to include a definition for "Additive Manufacturer" that would incorporate the parent company, agents, and contractors responsible for the delivery and maintenance of any additive system and suggested the following language: "Additive Manufacturer - The company that is primarily responsible for the creation of the formulae for the additive and is responsible for its manufacture." TMRA/SWBI commented that §114.6 should be revised to include definitions for "additive vendor" and "low emission diesel additive," and suggested the following language: "Additive vendor - Any person who markets, provides, or sell an additive that the executive director has approved for use in complying with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards)."; and "Low emission diesel additive - an additive that the executive director has approved for use in complying with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards)."

The commission does not agree that the terms specified in these comments need to be defined in the rule. This rule is directed toward diesel fuel producers and importers, not additive manufacturers and vendors. The commission made no changes to the rule in response to these comments.

ORYXE further commented that the words ", other than one composed solely of carbon and/or hydrogen," should be deleted from the definition of additive in §114.6(1).

The commission made no change to the rule in response to these comments. The wording for this definition was derived from the federal definition of additive in 40 CFR §79.2(e).

#### *Additive controls*

CITGO and ORYXE commented that §114.312(g) should be modified such as to create new subsections (g) and (h) so that alternative formulations that use new diesel formulations are treated separately from alternative formulations that utilize additives. ORYXE further commented that the revised §114.312(g) and (h) should include the words "additive manufacturer" in the sentences relating to proprietary or confidential information. CITGO commented that this revision would require a change to cite the new subsection (h) in the first sentence of §114.315(d): ". . . may approve alternative diesel fuel formulations as prescribed under §114.312(g) and (h) of this title . . ."

The commission made no change to the rule in response to these comments, because the rule is presently inclusive of the request and no additional rulemaking is needed.

Good Company commented that when the commission accepts a CARB equivalent or approved low emissions fuel for sale in Texas to the meet the LED requirements that the CARB certification of that fuel should be current and should not be a "small refinery certification."

The commission agrees that the suggested change more clearly states the intent of the rule and changed the provision in §114.312(f) accordingly.

#### *Registration*

Sierra supported the May 1, 2005, registration date found in §114.314(a).

The commission appreciates the support.

TPCA commented that §114.314 should be revised to require producers and importers of LED to provide information regarding the total volume of LED that they will have available for use in each affected county as of October 1, 2005, and the percentage of that total volume that will be produced using an additive. TMRA/SWBI commented that the registration requirements should require producers and importers report the total volume of LED that they will have available for use in each affected county for each calendar month from October 1, 2005, through September 30, 2006, and for each calendar quarter from October 1, 2006, through September 30, 2007, and the percentage of total volume that will be produced using an LED additive. TMRA/SWBI commented that the commission should require producers and importers to specify their LED production method (e.g., whether they used an additive or alternative formulation), report how much diesel they supplied to the affected counties in 2003 and 2004, and report how much of the total volume of diesel they supply to the affected counties produced outside of Texas (to avoid double counting of diesel or LED produced outside of Texas, and reported by the producer and importer of that same fuel).

The commission made changes to the rule in response to these comments. The registration requirements in §114.314 were amended to require producers and importers to submit information on the total barrels of diesel fuel they produced or imported annually for use in the affected counties, the projected amount of LED compliant fuel they are planning to produce or import for use in these areas on or after the implementation date, and any other information requested by the commission to determine whether an adequate supply of LED compliant fuel is expected to be available for use in the affected counties beginning on October 1, 2005.

ORYXE commented that §114.314(b) should be revised to increase the lead time required for a producer to register with the executive director their intent to make LED available for sale to at least 90 days.

The commission made no change to the rule in response to this comment. This provision only applies to producers or importers that have not provided diesel fuel to the affected counties in the past and requires these entities to give advance notice of their intention to supply diesel fuel into the affected areas by registering with the commission a minimum of 30 days in advance. They have the option to register well in advance of the 30-day minimum, if they so choose.

TMRA/SWBI commented that the commission should project the demand for diesel fuel in the affected counties beginning on October 1, 2005.

The commission made no change to the rules in response to this comment. The commission has adopted changes to the registration requirements that should provide sufficient information based on the current amount of diesel fuel being supplied to the affected counties and projected LED production to determine whether an adequate supply of LED compliant fuel is expected to be available for use in the affected counties beginning on October 1, 2005. The commission believes that the diesel fuel industry is better equipped to project demand for its product. Partly for

this reason, the commission solicited comments at proposal on how to better project supply and demand. The commission did not receive suggestions for how to project demand.

TMRA/SWBI commented that the heading for §114.314 should be revised to include "Additive Vendors," and provided suggested language to amend this section to address their comments regarding registration requirements.

The commission made no change to the rule in response to this comment. Only producers and importers of diesel fuel are required to register.

TMRA/SWBI commented that the commission should require the submittal of documentation that substantiates all representations made in a LED registration to verify/ensure the accuracy of representations made by producers, importers, and additive vendors. In addition, each registration should also be required to be certified and governed by the certification requirements of Texas Water Code, Chapter 7.

The commission made no change to the rules in response to this comment. Requiring supporting documentation as part of the registration is unduly burdensome. If the commission believes supporting documentation is needed to verify the accuracy of a registration, it has the authority to request such information. The registration form being developed by the commission will include a certification statement on the accuracy of the information being submitted.

TMRA/SWBI commented that the commission should provide, in the preamble, as much information as is currently available regarding the adequacy of the existing distribution system to reasonably conclude that all of the affected counties will have an adequate supply of LED compliant fuel.

The commission is confident that the adopted changes to the registration requirements of the rules will provide the commission with sufficient information to reasonably determine whether an adequate supply of LED compliant diesel fuel will be available for use in the affected counties. However, since this is information that producers and importers must submit to the commission by the new registration deadline of May 1, 2005, it is not available at this time. The commission made no change to the rules in response to these comments.

TMRA/SWBI commented that the registration requirements should require all registrants to explain, in detail, the manner in which their product will be made available for distribution in each affected county, in what time interval, and in what quantity. This should include requirements for additive vendors to demonstrate that existing fuel rack terminals can be used to integrate additives without physical changes to those terminals, and if changes are required, the specific cost and time line estimates should be provided.

The commission declines to make the suggested change. The recommended change would add significantly to the cost of the registration requirement, and would produce information that is of limited value. The commission has no basis to require such an action since the method of the distribution of LED compliant diesel fuel is not regulated by these rules.

TxOGA suggested that the commission delete §114.314(a), since the December 1, 2004, date has already passed.

The commission made changes to the rule in response to this comment. Producers and importers that have marketed diesel

fuel in the affected counties as of April 1, 2005, will be required to register with the commission by May 1, 2005.

TxOGA suggested that the commission revise §114.314(b) to replace the term "diesel fuel" with the phrase "Low Emission Diesel Fuel"; otherwise, those producers who are selling EPA grade diesel today, but have not yet registered to sell LED in the future, could be interpreted to be out of compliance.

The commission made no change to the rule in response to these comments. The registration requirements in §114.314(a) and (b) were intentionally written to apply to all producers and importers of diesel fuel that supply diesel fuel to the affected counties, not just those that will be producing or importing LED compliant diesel fuel.

TxOGA suggested that §114.314(c)(1) be revised to read "whether the producer or importer does or does not plan to produce or import . . ." The change is needed since producers cannot provide guarantees of future performance, but should be comfortable with sharing plans. FHR commented that the wording in §114.314(c)(1) should be changed from "will or will not" to "intends to," since as currently proposed, a company would be at risk of its registration being deemed false if unexpected events or changing market conditions cause the company to alter its plans as stated in the registration.

The commission agrees that the suggested changes more clearly state the intent of the provision and changed this provision accordingly to request whether the producer or importer does or does not intend to produce or import LED.

FHR commented that the current registration form on the TCEQ Web site will need to be changed well in advance of the first registration deadline specified in the proposed amended rules, since several items on the form are not applicable to non-LED producers and the form should be modified such that producers indicate if they have an approved alternative plan.

The commission appreciates the comment and will ensure that a revised registration form is available well in advance of the registration deadline.

FHR commented that companies that are proceeding under an approved alternative plan are not required to be in compliance with §114.314(c)(2) since they must instead comply with the standards in their individual alternative plan and that the commission must amend this subsection by either: 1) clarifying that it only applies to producers of LED; 2) adding the word "applicable" before "standards"; or 3) deleting it entirely. FHR further commented that this subsection is an unnecessary provision since whether or not a company makes a statement accepting these standards is irrelevant to whether or not a company is legally subject to them.

The commission agrees that this provision is not needed since acceptance of these rules is irrelevant to whether or not a company is legally subject to them. The commission made changes to the rule in response to this comment.

TMRA/SWBI commented that all registrants should be required to submit, under confidentiality terms, if necessary, the cost associated with producing their fuel/additive and a range of expected pricing of their fuel/additive. TMRA/SWBI further commented that the commission should solicit comments about the expected price of LED fuel/additives, both through *Texas Register* notice and independently from market experts.

The commission does not see the need to request this type of information, as future fuel prices are driven more by volume demand and market competition than by production costs. The commission made no change to the rules in response to these comments.

TMRA/SWBI commented that all registrants should be required to provide test results that demonstrate the compatibility and performance of their fuel/additive with a wide variety of diesel equipment in use throughout the affected counties, i.e., such as "do no harm" tests that demonstrate the long-term compatibility of fuels/additives with diesel engine components and dynamometer tests that demonstrate the impact of the fuel/additive on engine horsepower in various operational scenarios.

The commission does not believe the type of testing requested by these commenters is a necessity for these rules. All fuels and fuel additives that are intended for use in on-road motor vehicles are required by federal regulation to be registered with EPA. Each manufacturer or importer of gasoline, diesel fuel, or a fuel additive is required to have its product registered by EPA prior to its introduction into commerce. Registration involves providing a chemical description of the product and certain technical, marketing, and health-effects information. This allows EPA to identify the likely combustion and evaporative emissions. In certain cases, health-effects testing is required for a product to maintain its registration or before a new product can be registered. EPA uses this information to identify products whose emissions may pose an unreasonable risk to public health, warranting further investigation and/or regulation. The definition of additive in §114.6(1) requires additives to be approved and registered with EPA. The commission made no change to the rules in response to these comments.

#### *Alternative Formulations*

TPCA commented that §114.315 should be revised to require producers of LED, as well as producers of additives, to submit a certificate or other documentation that their blend of LED or additive will not damage diesel-powered engines or compromise their performance. This documentation will allow diesel fuel suppliers in the affected counties to allay their customer's concerns regarding the use of LED or additized diesel fuels.

The commission disagrees with this comment. As stated previously, fuel producers bear the responsibility for ensuring customer satisfaction with their products. The commission made no change to the rule in response to these comments.

Valero commented that the original wording used for the test methods in §114.315(a)(1) - (9) should be retained, except that the year designation for the ASTM test method should be eliminated and the "active" version specified. FHR and TxOGA commented that §114.315(a) should be revised to include test methods for polycyclic aromatics and nitrogen since test methods for these properties are not specified in ASTM D975 and suggested that the current version of ASTM D4629 for nitrogen and the current version of ASTM D5188 for polycyclic aromatics should be specified. FHR also requested that the most current version of ASTM D5186 be allowed for determination of total aromatics using the CARB correlation for conversion of weight percent to volume percent. ORYXE commented that additional language should be added to §114.315(a) to clarify that the ASTM test methods and procedures to be used are the most current version adopted and in use by ASTM. EPA commented that the commission should harmonize the sulfur testing methods in §114.315(a)

with the EPA's non-road rule (Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, June 29, 2004, 69 FR 38957). TxOGA supported reliance on test methods prescribed by ASTM.

The commission agrees with these comments in that portions of the original rule should be retained as supplementary methods to the appropriate methods specified in ASTM D975 for testing the fuel content requirements of this rule and made changes accordingly.

Sierra commented that the term "comparable" found in §114.315(c)(5)(A) should be replaced with the phrase "equal to but not greater than." ORYXE commented that the term "comparable" in §114.315(c)(5)(A) should be replaced with the industry standard term of "equivalent" and a reference to standard laboratory guidelines and measurements for particular emission constituents. FHR commented that §114.315(c)(6)(A)(i) should be revised to read as follows: ". . . and nitrogen content not appreciably exceeding that of the candidate fuel . . ."

The commission made changes in §114.315(c) to include a new formula that specifies the measurement tolerances per pollutant type that will be acceptable when calculating the determination of whether the emissions generated by a candidate fuel are comparable to the emissions generated by the reference fuel.

ORYXE commented that "additive manufacturer" should be added to §114.315(c) to allow additive manufacturers to apply for the approval of an alternative diesel fuel formulation.

The commission agrees that persons other than producers and importers should be allowed to apply for approval of an alternative diesel fuel formulation under the provisions adopted in §114.315 and made changes accordingly.

TxOGA supported the revision the commission made to §114.315(d). ORYXE commented that §114.315(d) should include a statement that would allow previously approved technologies to be grandfathered under these provisions. ORYXE further commented that §114.315(d)(1) should be revised to include protections for the confidentiality of business information and additive formulations. EPA commented that rule language in §114.315(c) and (d) should be clarified so that any producer of an alternative fuel formulation having a post-January 2001 approved CARB executive order for a Certified Diesel Fuel Formulation could provide the executive order to the executive director as an acceptable approach to meeting the requirement in §114.312(g).

The commission appreciates the support and has made no changes to the rule in response to these comments. The commission does not believe it is appropriate to include requirements relating to the handling of confidential information in the rule since the Texas Public Information Act exceptions for trade secrets and business confidential information apply across the agency. As is the case for all such information, registrants, submitters of alternative emission reduction plans, and applicants for approvals of alternative formulas and additives should clearly mark confidential information as such when submitting documents to TCEQ. The commission believes that adopted changes to §114.312(e) provide a clear understanding that formulations that were approved by CARB up to January 18, 2005, are not required to be approved under §114.315. In addition, the adopted changes in §114.315 provide the executive director with authority to approve formulations based upon satisfaction that comparable emission reductions will occur, which is likely if the formulation is already approved by CARB.

EPA commented that the rules for the approval of alternative diesel formulations in §114.315 should include a process for EPA involvement in the approval process such as allowing for EPA comment and concurrence and/or separate EPA approval.

The commission agrees with this comment and made changes accordingly to provide the executive director the ability to accept fuel additives that have been approved by EPA through its Environmental Technology Verification (ETV) process.

EPA commented §114.315(c)(4)(D) should be modified to follow the EPA's ETV program testing protocol for fuel additives, which requires that method of testing be performed on seven different engines in order to establish an emission reduction of that additive.

The commission declines to make the suggested changes. The commission adopted changes to §114.315(d) that would allow the executive director to approve formulations that have been approved by EPA through its ETV program.

#### *Sampling Rate*

Sierra supported the revisions to §114.316 relating to the rate of sampling for LED fuels.

The commission appreciates the support. However, some additional revisions to the sampling frequency have been made since proposal.

CITGO, FHR, TPCA, TxOGA, and Valero commented that the proposed sampling rate in §114.316(b) and (c) is excessive. TxOGA further commented that the sampling frequency should be designed to match final blending methodology. FHR, TxOGA, and Valero commented that the original rule language denoting "each final blend" was appropriate for blending into bulk fuel tanks, which are mixed in large batches of approximately 10,000 to 50,000 barrels at a time. TxOGA and Valero commented that where blending occurs as product is being directly transferred into pipelines, barges, railroad cars, and trucks, the sampling frequency should be more frequently. TxOGA suggested sampling once every 250,000 gallons and Valero suggested once every 25,000 barrels.

The commission agrees that the sampling rate frequency should be consistent with the way fuels are blended and made changes to the rule in response to these comments. As noted in the preamble, §114.316(b) and (c) have been relettered to (c) and (d) respectively. The proposed sampling rate of once per 100,000 gallons in new §114.316(c) has been removed and the original language was retained for sampling of a final blend. Given the large batch size, the commission believes that this rate is an appropriate frequency for sampling and testing. Under new subsection (d), if the approved final blend, including blends that contain an additive system, is blended as the product is being transferred to pipelines, barges, etc., then the sampling frequency was changed from once every 50,000 gallons to once every 250,000 gallons.

CITGO commented that the commission should consider breaking apart §114.316(c) into two parts, modifying subsection (c) and making a new subsection (d), to follow through with its previously suggested changes to §114.312 for separate language for alternative plans with different diesel fuel formulations versus alternative plans that utilize additives.

The commission adopted amendments to §114.316 to address separate reporting requirements for fuels using additives for compliance with the LED requirements.

Valero commented that the commission should limit testing for "other appropriate components" in §114.316 to those fuel parameters with specified limits in a CARB executive order or TCEQ approval.

The commission agrees with this comment and made changes to the rule accordingly.

FHR commented that if additives are used to meet alternate formulations requirements, the commission should rely on volumetric additive reconciliation (VAR) accounting as is done in the federal gasoline detergent program, specified in 40 CFR Part 80, Subpart G - Detergent Gasoline, for sampling requirements, since fuel producers and distributors are well experienced in conducting such programs and have the necessary mechanisms and processes in place. In addition, Valero commented that the commission should not require testing for the additive as this analysis is not always possible, but should use the terminal's additive addition documentation to verify compliance with the proper additization rate.

The commission declines to make changes to the rules in response to these comments. The commission is confident that the adopted changes to §114.316 provide adequate provisions to ensure reasonable compliance.

CITGO commented that a new §114.316(d) should be written to read as follows: "If the approved blend contains an additive system, the producer or importer or authorized contractor shall maintain records showing that sufficient additive was added to maintain the appropriate additive concentration as approved by the executive director. The producer or importer shall maintain, for two years from the date of distribution, records showing the volume of additive used with the corresponding volume of diesel distributed. Any producer or importer of LED whose alternative plan utilizes an additive program who does not maintain these records and make them available for inspection by the TCEQ shall be deemed to exceed the standards specified in §114.312 of this title."

The commission declines to make changes to the rule in response to this comment. However, the commission has revised the requirements for approved blends containing an additive system, in that the final blend must be sampled and tested for the content of the appropriate fuel components of the base fuel and additive as listed in the approval notification issued by the executive director under §114.315(c) or (d). The producer or importer or authorized contractor shall maintain records showing that sufficient additive was added to maintain the appropriate additive concentration as approved by the executive director. However, if the additive is approved by the executive director for use with diesel fuel produced to comply with the fuel content standards specified in 40 CFR §80.510, the testing for the content of the fuel components of the base fuel is not required.

CITGO commented that there is no value added if the state requires testing of the base diesel parameters in a program where an additive is used with standard EPA diesel to make LED. CITGO further commented that an extensive sampling and testing program for LED that is made through the use of additives does not add value and should not be included in the final rule.

The commission agrees that testing of the base fuel is not warranted if the additive is approved for use with standard EPA diesel and made changes to the rules accordingly. The commission made no other changes to the rules in response to these comments.

ORYXE commented that §114.316 should be revised to include a new subsection devoted entirely to recordkeeping requirements for fuel producers utilizing an additive system and suggested the following language: "If the approved blend contains an additive system that conforms with §114.312(h), the producer or importer or authorized contractor shall maintain records showing that sufficient additive was added to maintain the appropriate additive concentration as approved by the executive director. The producer or importer shall maintain for two years from the date of distribution, records showing the volume of low emission diesel distributed and the corresponding additive contained in that volume."

The commission agrees that recordkeeping requirements for fuel producers using additive systems should be addressed in a separate subsection and made changes to the rule accordingly.

#### *Reporting*

CITGO, FHR, ORYXE, and TxOGA commented that the five-day response time in §114.316(d) for written data requests is too short of a deadline. CITGO, ORYXE, and TxOGA suggested that the response time be extended to 15 days. FHR suggested that the provision be revised to allow the response time to be set by the commission on a case-by-case basis.

The commission agrees and made changes to the rule in response to these comments to extend the response time in these provisions to 15 days.

FHR further commented that §114.316(d) should be modified to include language that would clarify that the "presumption" of noncompliance referenced in this subsection is refutable by the refiner through the presentation of any credible evidence.

The commission declines to make the suggested changes. The commission made changes to §114.316 to be very specific that if sampling and testing is not performed as required, the fuel is considered noncompliant unless the producer or importer demonstrates that the fuel meets the required standards and limits.

CITGO, FHR, ORYXE, and TxOGA commented that the 15-day response time in §114.316(g) for quarterly reports is too short of a deadline and does not provide ample time to put together the information requested by the commission. CITGO, ORYXE, and TxOGA suggested that the response time should be extended to 45 days from the close of the previous calendar quarter. FHR suggested that it should be revised to "no later than the last day of the second month following the end of the calendar quarter."

The commission agrees with the comment concerning the time needed to gather the required information. Therefore, the commission has revised the response time from 15 days to 45 days following the end of the calendar quarter.

FHR commented that §114.316(f) should be revised to provide an exception for producers (such as FHR) and importers that utilize any form of averaging that includes all diesel batches produced for the LED areas so that only the total volume of the previously certified diesel used and its properties would need to be reported.

The commission declines to make the suggested changes. The commission is confident that the adopted changes to §114.316 provide adequate provisions to ensure reasonable compliance.

Direct Fuels commented that transmix operators should not be considered subject to the monitoring, recordkeeping, and reporting requirements of §114.316.

The commission disagrees and made no changes to the rule in response to this comment. Transmix operations are considered to be producers and like all producers are subject to the requirements of these rules. The commission believes that transmix operators are capable of complying with all of the requirements of this rule, especially since adopted changes to §114.312 removed the sulfur content requirements and transmix operations can apply for an alternative emissions reduction plan under §114.318.

#### *Product Transfer Documents (PTD)*

FHR, TxOGA, TPCA, and Valero commented that the required statements for product transfer documents in §114.316(e)(7)(A), (B), and (C) are too long and should be amended to shorten, abbreviate, or eliminate the statements entirely. Valero suggested that the provision be amended to achieve a workable and enforceable PTD designation scheme that minimizes the number of grades to only three main grades: Texas LED, alternative emission reduction plan diesel, and non-Texas LED. Valero further commented that the proposed PTD language is too technical and complex and should be simplified into short plain English phrases, such as "Texas Low Emission Diesel. This fuel may be used in diesel engines in East Texas."

The commission agrees that the product transfer documents statement should be simplified and made changes to the rule accordingly. However, the language in the product transfer documents is an important tool for determining compliance with the LED requirements and the commission declines to eliminate this requirement entirely. The certification statements required in subsection (e) were simplified, generally requiring either: 1) the product is LED; 2) the product cannot be used as LED fuel without further processing; or 3) the product has been produced under a commission approved alternative emission reduction plan.

FHR commented that §114.316(e) should be modified to include language that clarifies that this subsection applies only to diesel fuel intended for the counties specified in §114.319.

The commission has not made any changes due to these comments. It is the commission's intent that the requirements in §114.316(e) (now subsection (g)) apply to "All parties in the distribution chain (producer, importer, terminals, pipelines, trucks, rail carriers, and retail fuel dispensing outlets) subject to the provisions of §114.312 of this title . . . ." Since §114.312 applies to all diesel fuel intended for the counties specified in §114.319, including diesel fuel sold under an alternative plan, no change is needed to §114.316(e).

#### *Alternative plans*

CAPCO commented that the commission should reconsider any alternative method of compliance impacting EAC areas to ensure LED availability in EAC areas during the critical 2005 - 2007 period.

The commission made no change to the rules in response to this comment. The commission believes that the adopted changes (a short postponement of the compliance date), will allow adequate supplies of LED compliant diesel to be produced and distributed into the Texas market.

TxOGA commented that in §114.318, the commission should develop or allow compliance via more simple arithmetic algorithms or put models out on a Web site where companies can make runs as necessary to plan future compliance. In addition, the commission should revise its policy judgements now being used that disallow time period or geographic balancing and carryover. This



change would be consistent with the transport concepts EPA and the commission recognize.

The commission made no change to the rule in response to these comments. The commission has posted on its Web site models that calculate emissions performance based on fuel property changes to assist regulated entities with compliance planning. The commission has allowed regulated entities to use these models to support their alternative emission reduction plans as allowed under §114.318.

FHR commented that §114.318(a) should be amended to read as follows, ". . . will be considered in compliance with the requirements of this division, except that the producer must also comply with Section 114.314 (Registration) and Section 114.316 (Monitoring, Record keeping and Reporting) subsections (d), (e)(1) - (7), (f) and (l)."

The commission believes that the language in proposed new §114.318(a) is clear and does not need to be changed as suggested by the commenter. A producer with an approved alternative emission reduction plan under §114.318 is considered to be in compliance with the LED standards set forth in §114.312(a). Under the adopted changes to the LED rules, holders of approved alternative emission reduction plans must comply with provisions of the LED rules, such as the registration requirements of §114.314 and the monitoring recordkeeping and reporting requirements of §114.316 as applicable. Because these producers are committing to an alternative fuel strategy to achieve the NO<sub>x</sub> reductions expected from LED, the requirements of other provisions of the LED rules, such as §114.312(f) regarding alternative diesel fuel specifications and §114.317 regarding exemptions to LED requirements do not apply. The commission made no changes to the rule in response to these comments.

EPA commented that the commission should work with the EPA on a process for coordination of alternative emission reduction plans to help ensure acceptance by EPA as required in §114.318(a).

The commission anticipates working with EPA to successfully coordinate the acceptance of alternative compliance plans. The commission made no additional changes to the rule in response to these comments.

#### *Transmix*

Representative Truitt commented that transmix processing operations should be exempted from the sulfur, aromatic, and cetane limits in the LED rules and should be allowed to follow the implementation time lines of the federal EPA on-road and non-road diesel regulations instead. Direct Fuels commented that the commission should amend the LED rules to exempt transmix processors from the LED 15 ppm sulfur standard that is to take effect April 1, 2005, in the 110-county area that includes the diesel market of Direct Fuels.

The commission made changes to the rules to remove the sulfur requirements in §114.312 and therefore no action is needed to address these comments in regards to sulfur. The commission made no changes to the rules in response to the comments relating to controls on aromatics and cetane since it is the understanding of the commission that transmix operators can meet these requirements through the alternative methods of compliance allowed in the rule.

Direct Fuels commented that the commission should revise §114.317 to include a new subsection (e) exempting transmix

processing operations from the LED rules and suggested the following language: "(e) The owner or operator of a transmix processing facility that separates transmix or other off-specification fuel is exempt from the provisions of this division (relating to Low Emission Diesel)."

The commenter requests an action that is beyond the scope of this rulemaking, as §114.317 was not amended in the proposed rulemaking that was published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12098). Furthermore, the commission believes that transmix operators can meet the LED requirements through the alternative methods of compliance allowed in the rule.

#### *General Comments*

TxOGA commented that it agreed that the flexibility offered in compliance through the various alternative compliance methods will help bring forward additional supply alternatives. TxOGA expressed concern with field level compliance. TxOGA expressed the belief that compliance with the rules is fully based on self-reporting, with no field level resources being committed to this area. TXOGA commented that the enforcement methodology applied to this rule seems to invite import or production of fuel that does not meet the standards but can easily be hidden in a fungible system, and sees this as a major flaw in the rules.

The commission believes that the enforcement of these rules will be no different than any of the other fuel related rules that are currently being monitored and enforced by the commission. The commission made no changes to the rules in response to these comments.

FHR commented that the words, "that may ultimately" in §§114.6(14)(A), 114.312(a), and 114.319(a), (b), and (c), should be replaced with "that is intended to," since it is impossible for a wholesale fuel supplier to know if the fuel's end use will be in a diesel compression-ignition engine or whether it will be used in a county that is subject to the LED rule.

The commission disagrees with this suggested change as it will make the rules extremely difficult to enforce. The language proposed in these comments would place the burden on the commission or EPA to prove intent in an enforcement action in order to show a violation. As the commission explained in response to a similar comment to the adoption of the LED rule on December 6, 2000, the rules are directed at producers and importers, and while they may not have control over the handling or use of the fuel once it leaves their possession, they generally know the area in which it is to be used, and how it will be used. This language puts the burden on a producer, importer, or supplier who is sending diesel fuel into areas in or near the covered counties to either ensure that noncompliant fuel is not meant for distribution in the covered area or ensure that the fuel complies with these rules. The commission made no change to the rule language in response to this comment.

TMRA/SWBI commented that the commission should give priority to the award of Texas Emissions Reduction Plan grant funds for a refueling infrastructure project regarding the use of the LED Program-approved Oryxe additive, given that it would provide important information for the commission as well as diesel consumers in the affected counties.

The commenter requests an action that is beyond the scope of this rulemaking, as Subchapter K (Mobile Source Incentive Programs) was not amended in the proposed rules that were published in the December 31, 2004, issue of the *Texas Register* (29

TexReg 12098). The commission made no changes to the rules in response to this comment.

TMRA/SWBI commented that the commission has either not addressed or fully satisfied applicable statutory fiscal analysis requirements, including the Cost/Benefit Note requirement of Texas Government Code, §2001.024(a)(5) that requires costs and benefits to be estimated for each year of the first five years that the rules will be in effect.

The commission disagrees with this comment. This proposed rulemaking did not change the requirements to produce low emission diesel, which was established in an earlier rulemaking. The intent of the proposed rules was to extend the compliance deadline to October 1, 2005, and establish firm deadlines for producers to notify the commission whether or not they would produce low emission diesel. Production costs to meet LED standards of \$.04 to \$.08 per gallon were determined by staff to be valid cost estimates for the first five years the proposed rules will be in effect. Since a number of strategies can be employed by producers to meet LED standards, more precise estimates of production costs are not available. Alternative diesel fuel formulations may appear on the market and be approved by the executive director during the proposed deadline extension, which may give producers more flexibility in terms of production methods and costs.

Valero commented that the proposed §114.312(f)(1) allows alternative CARB certifications but does not automatically allow CARB diesel, i.e., diesel that meets 10 volume percent aromatics or alternative certification of up to 21 volume percent aromatics if equivalent limits for other fuel parameters such as poly aromatic hydrocarbons, API gravity, cetane number, and nitrogen content are met. Valero further commented that to increase the potential supply of Texas LED, the commission should revise the proposed rules so that all CARB approved certified diesel fuel formulations as of January 18, 2005, will be considered to meet the requirements of Texas LED.

The commission made changes to the rule in response to these comments to amend §114.312(e) to allow diesel fuel that has been produced to meet all specifications for diesel fuel under regulations adopted by the CARB, except for those approved for small refinery compliance, that were in effect as of January 18, 2005, to be considered in compliance with the requirements of §114.312(a).

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.6

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and

purposes of the TCAA; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of Texas LED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider alternative emission reduction plans to comply with Texas LED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

#### §114.6. Low Emission Fuel Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, §3.2 and §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), have the following meanings, unless the context clearly indicates otherwise.

(1) Additive--Any substance, other than one composed solely of carbon and/or hydrogen, that is intentionally added to gasoline or diesel fuel, including any added to a motor vehicle fuel system, and that is not intentionally removed prior to sale or use and that is approved by and registered with the United States Environmental Protection Agency in accordance with 40 Code of Federal Regulations Part 79.

(2) Barrel--A unit of measure equal to 42 United States gallons.

(3) Bulk plant--An intermediate motor vehicle fuel distribution facility where delivery of motor vehicle fuel to and from the facility is solely by truck or pipeline.

(4) Bulk purchaser/consumer--A person who purchases or otherwise obtains motor vehicle fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(5) Common carrier--A person engaged in the transportation of goods or products of another person for compensation and is available to the public for hire.

(6) Designated alternative limit (DAL)--An alternative specification limit for a specific fuel standard, which is assigned by a producer or importer to a final blend of low emission diesel fuel (LED) in accordance with §114.313 of this title (relating to Designated Alternative Limits).

(7) Diesel fuel--Any fuel that is commonly or commercially known, sold, or represented as Grade No. 1-D or Grade No. 2-D diesel fuel, in accordance with the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), except for lubricity.

(8) Final blend--A distinct quantity of low emission diesel (LED) that is introduced into commerce without further alteration, which would tend to affect a regulated LED specification of the fuel.

(9) Further process--To perform any activity on motor vehicle fuel, including distillation, treating with hydrogen, blending, or addition of an approved additive, for the purpose of bringing the motor vehicle fuel into compliance with the requirements of Subchapter H of this chapter.

(10) Gasoline--Any fuel that is commonly or commercially known, sold, or represented as gasoline, in accordance with ASTM Test Method D4814-99 (Standard Specification for Automotive Spark-Ignition Engine Fuel), dated 1999.

(11) Import--The process by which motor vehicle fuel is transported into the State of Texas by any means or method whatsoever, including transport via pipeline, railway, truck, motor vehicle, barge, boat, or railway tank car.

(12) Import facility--The stationary motor vehicle fuel transfer point wherein the importer takes delivery of imported motor vehicle fuel and from which imported motor vehicle fuel is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the fuel will be delivered to a bulk plant or retail fuel dispensing facility.

(13) Importer--Any person, except a person acting as a common carrier, who imports motor vehicle fuel.

(14) Low emission diesel (LED)--Any diesel fuel:

(A) sold, intended for sale, or made available for sale that may ultimately be used to power a diesel fueled compression-ignition engine in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates);

(B) that the producer knows, or reasonably should know, may ultimately be used to power a diesel fueled compression-ignition engine in counties listed in §114.319 of this title; and

(C) complies with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards).

(15) Motor vehicle--Any self-propelled device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c).

(16) Motor vehicle fuel--Any gasoline or diesel fuel used to power gasoline fueled spark-ignition or diesel fueled compression-ignition engines.

(17) Non-road equipment--Any device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine that is not required to be registered under Texas Transportation Code, §502.002.

(18) Produce--Perform the process to convert liquid compounds that are not motor vehicle fuel into motor vehicle fuel, except where a person supplies motor vehicle fuel to a producer who agrees in writing to further process the motor vehicle fuel at the production facility and to be treated as a producer of the motor vehicle fuel, only the final producer shall be deemed for all purposes under Subchapter H of this chapter to be the producer of the motor vehicle fuel.

(19) Producer--Any person who owns, leases, operates, controls, or supervises a production facility and/or produces motor vehicle fuel.

(20) Production facility--A facility at which motor vehicle fuel is produced or that manufactures liquid fuels by distilling petroleum.

(21) Retail fuel dispensing outlet--Any establishment at which gasoline and/or diesel fuel is sold or offered for sale for use in motor vehicles, and the fuel is directly dispensed into the fuel tanks of the motor vehicles using the fuel.

(22) Supply--To provide or transfer fuel to a physically separate facility, vehicle, or transportation system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.

TRD-200501103

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: March 31, 2005

Proposal publication date: December 31, 2004

For further information, please call: (512) 239-0348



## SUBCHAPTER H. LOW EMISSION FUELS

### DIVISION 2. LOW EMISSION DIESEL

#### 30 TAC §§114.312, 114.314 - 114.316, 114.318, 114.319

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of Texas LED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider alternative emission reduction plans to comply with Texas LED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

§114.312. Low Emission Diesel Standards.

(a) No person shall sell, offer for sale, supply, or offer for supply, dispense, transfer, allow the transfer, place, store, or hold any diesel fuel in any stationary tank, reservoir, or other container in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates), that may ultimately be used to power a diesel fueled compression-ignition engine in the affected counties, that does not meet either the low emission diesel (LED) standards of subsections (b) and (c) of this section, or the requirements of subsection (f) of this section.

(b) The maximum aromatic hydrocarbon content of LED is 10% by volume per gallon; or the LED has been reported in accordance with all of the requirements of §114.313 of this title (relating to Designated Alternative Limits), where:

(1) the aromatic hydrocarbon content does not exceed the designated alternative limit (DAL); and

(2) the DAL exceeds 10% by volume, the excess aromatic hydrocarbon content is fully offset in accordance with §114.313 of this title.

(c) The minimum cetane number for LED is 48.

(d) Subsection (a) of this section does not apply to a sale, offer for sale, or supply of diesel fuel to a producer where the producer further processes the diesel fuel at the producer's production facility prior to any subsequent sale, offer for sale, or supply of the diesel fuel.

(e) Diesel fuel that has been produced to comply with all specifications for a Certified Diesel Fuel Formulation as approved by an executive order by the California Air Resources Board on or before January 18, 2005, for compliance with California diesel fuel regulations that were in effect as of October 1, 1993, except for those approved for small refinery compliance, or diesel fuel that has been produced to meet all specifications for diesel fuel under regulations adopted by the California Air Resources Board, except for those approved for small refinery compliance, that were in effect as of January 18, 2005, may be used to satisfy the requirements of subsection (a) of this section.

(f) Alternative diesel fuel formulations that the producer has demonstrated to the satisfaction of the executive director, through emissions and performance testing methods prescribed in §114.315(c) and (d) of this title (relating to Approved Test Methods), as achieving comparable or better reductions in emissions of oxides of nitrogen, volatile organic compounds, and particulate matter may be used to satisfy the requirements of subsections (b) and (c) of this section. For alternative diesel fuel formulations that incorporate additive systems, the estimated emissions benefits of the alternative diesel fuel formulation may be determined by comparing the emissions and performance characteristics of the alternative diesel fuel with the additive system versus the emissions and performance characteristics of a diesel fuel without the additive system, as determined by the testing methods prescribed in §114.315(c) and (d) of this title.

#### *§114.314. Registration of Diesel Producers and Importers.*

(a) Each producer and importer that sold, offered for sale, supplied, or offered for supply diesel fuel from its production facility or import facility that may have been used in counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) on or before April 1, 2005, shall register with the executive director by May 1, 2005.

(b) Each producer or importer that did not begin to sell, offer for sale, supply, or offer to supply diesel fuel from its production facility or import facility that may ultimately be used in counties listed in §114.319 of this title until after April 1, 2005, shall register with the executive director at least 30 days prior to the first date the diesel fuel is to be made available for use in the listed counties.

(c) Registration must be submitted on forms prescribed by the executive director and must include, at a minimum:

(1) a signed statement indicating whether the producer or importer does or does not intend to produce or import low emission diesel for use in the counties listed in §114.319 of this title on or after October 1, 2005;

(2) a statement of the total number of barrels of diesel fuel produced or imported in the 12 months prior to the date of registration that the producer or importer sold, offered for sale, supplied, or offered for supply from its production facility or import facility that was intended for use in the counties listed in §114.319 of this title;

(3) if appropriate, a statement of the estimated total number of barrels of low emission diesel that the producer or importer is planning to produce or import in the 12 months following the compliance date listed in §114.319(c)(1) of this title that the producer or importer intends to sell, offer for sale, supply, or offer to supply from its production facility or import facility for use in the counties listed in §114.319 of this title;

(4) if appropriate, a statement of the estimated total number of barrels of diesel fuel that the producer or importer is planning to produce or import under an alternative emission reduction plan under §114.318 of this title (relating to Alternative Emission Reduction Plan) in the 12 months following the compliance date listed in §114.319(c)(1) of this title that the producer or importer intends to sell, offer for sale, supply, or offer to supply from its production facility or import facility for use in the counties listed in §114.319 of this title;

(5) any other information determined by the executive director to be necessary to determine the adequacy of diesel supply in the affected counties; and

(6) a signed statement of consent by the registrant that the executive director is permitted to collect samples and access documentation and records.

(d) The executive director shall maintain a listing of all registered producers and importers.

#### *§114.315. Approved Test Methods.*

(a) Compliance with the diesel fuel content requirements of this division must be determined by applying the appropriate test methods and procedures specified in the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), or the following supplementary methods, as appropriate.

(1) The aromatic hydrocarbon content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography).

(2) The polycyclic aromatic hydrocarbon content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography).

(3) The nitrogen content may be determined by the active version of ASTM Test Method D4629 (Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection).

(4) The American Petroleum Institute (API) gravity index may be determined by the active version of ASTM Test Method D287

(Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)).

(5) The viscosity may be determined by the active version of ASTM Test Method D445 (Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)).

(6) The flashpoint may be determined by the active version of ASTM Test Method D93 (Standard Test Methods for Flash-Point by Pesky-Martens Closed Cup Tester).

(7) The distillation temperatures may be determined by the active version of ASTM Test Method D86 (Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure).

(b) Modifications to the testing methods and procedures in this section may be approved by the executive director.

(c) The executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title (relating to Low Emission Diesel Standards) in accordance with the following procedures.

(1) The applicant shall initially submit a proposed test protocol to the executive director, that must include:

(A) the identity of the entity that will conduct the tests described in paragraph (4) of this subsection;

(B) test procedures consistent with the requirements of paragraphs (2) and (4) of this subsection;

(C) test data showing that the candidate fuel meets the specifications for the appropriate Grade No. 1-D S15 or S500, or Grade No. 2-D S15 or S500 diesel fuel as specified in the active version of ASTM D975 (Standard Specification for Diesel Fuel Oils), except for lubricity, and identifying the characteristics of the candidate fuel identified in paragraph (2) of this subsection;

(D) test data showing that the fuel to be used as the reference fuel satisfies the characteristics identified in paragraph (3) of this subsection;

(E) reasonable quality assurance and quality control procedures; and

(F) notification of any outlier identification and exclusion procedure that will be used, and a demonstration that any such procedure meets generally accepted statistical principles. The tests must not be conducted until the protocol is approved by the executive director. Upon completion of the tests, the applicant may submit an application for certification to the executive director. The application must include the approved test protocol, all of the test data, a copy of the complete test log prepared in accordance with paragraph (4)(D) of this subsection, a demonstration that the candidate fuel meets the requirements for certification specified in this subsection, and other information as the executive director may reasonably require. Upon review of the certification application, the executive director shall grant or deny the application. Any denial must be accompanied by a written statement of the reasons for denial.

(2) The applicant shall supply the candidate fuel to be used in the comparative testing in accordance with paragraph (4) of this subsection.

(A) The sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon, nitrogen content, and cetane number of the candidate fuel must be determined as the average of three tests conducted in accordance with the referenced test method specified in subsection (a) of this section.

(B) The identity and concentration of each additive in the candidate fuel must be determined by a test method specified by the applicant and approved by the executive director to adequately determine the presence and concentration of the additive.

(C) The applicant may also specify any other parameters for the candidate fuel, along with the test method for determining the parameters. The applicant shall provide the chemical composition of each additive in the candidate fuel, except when the chemical composition of an additive is not known to either the applicant or to the manufacturer of the additive (if other), the applicant may provide a full disclosure of the chemical process of manufacture of the additive in lieu of its chemical composition.

(3) The reference fuel used in the comparative testing described in paragraph (4) of this subsection must be produced from straight-run diesel fuel by a hydrodearomatization process and must have the following characteristics determined in accordance with the referenced test method specified in subsection (a) of this section:

(A) sulfur content - 15 parts per million maximum;

(B) total aromatic hydrocarbon content - 10% maximum, volume percent;

(C) polycyclic aromatic hydrocarbon content - 1.4%, maximum weight percent;

(D) nitrogen content - ten parts per million, maximum;

(E) cetane number - 48, minimum;

(F) API gravity index - 33 to 39 degrees;

(G) viscosity at 40 degrees Celsius - 2.0 to 4.1 centistokes;

(H) flash point - 130 degrees Fahrenheit, minimum; and

(I) distillation:

(i) initial boiling point - 340 to 420 degrees Fahrenheit;

(ii) 10% point - 400 to 490 degrees Fahrenheit;

(iii) 50% point - 470 to 560 degrees Fahrenheit;

(iv) 90% point - 550 to 610 degrees Fahrenheit; and

(v) end point - 580 to 660 degrees Fahrenheit.

(4) Exhaust emission tests using the candidate fuel and the reference fuel specified in paragraph (3) of this subsection must be conducted in accordance with the federal test procedures as specified in 40 CFR Part 86 (Control of Emissions from New and In-Use Highway Vehicles and Engines), Subpart N (Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines - Gaseous and Particulate Exhaust Test Procedures), as amended.

(A) The tests must be performed using a Detroit Diesel Corporation Series-60 engine or an engine specified by the applicant and approved by the executive director to be equally representative of the post-1990 model year heavy-duty diesel engine fleet.

(B) The comparative testing must be conducted by a third party that is mutually agreed upon by the executive director and the applicant. The applicant shall be responsible for all costs of the comparative testing.

(C) The applicant shall ensure that one of the test sequences in clause (i) or (ii) of this subparagraph is used to conduct the exhaust emissions tests.

(i) If both cold start and hot start exhaust emission tests are conducted, a minimum of five exhaust emission tests, each test consisting of at least one cold start and two hot start cycles, must be performed on the engine with each fuel, using either of the following sequences, where "R" is the reference fuel and "C" is the candidate fuel: RC RC RC (and continuing in the same order) or RC CR RC CR RC (and continuing in the same order). The engine mapping procedures and a conditioning transient cycle must be conducted with the reference fuel before each cold start procedure using the reference fuel. The reference cycle used for the candidate fuel must be the same cycle as that used for the fuel preceding it.

(ii) If only hot start exhaust emission tests are conducted, one of the following test sequences must be used throughout the testing, where "R" is the reference fuel and "C" is the candidate fuel:

(I) Alternative 1: RC CR RC CR (continuing in the same order for a given calendar day; a minimum of 20 individual hot start exhaust emission tests must be completed with each fuel);

(II) Alternative 2: RR CC RR CC (continuing in the same order for a given calendar day; a minimum of 20 individual hot start exhaust emission tests must be completed with each fuel);

(III) Alternative 3: RRR CCC RRR CCC (continuing in the same order for a given calendar day; a minimum of 21 individual hot start exhaust emission tests must be completed with each fuel);

(IV) Alternative 4: RR CCC RR (with a conditioning period not to exceed 72 hours of engine operation on the candidate fuel before the first individual hot start emission test on the candidate fuel is performed; the conditioning cycle must represent normal engine operation); or

(V) Alternative 5: a sequence determined to provide equivalent results and approved by the executive director.

(iii) For alternatives 1, 2, and 3, an equal number of tests must be conducted using the reference fuel and the candidate fuel on any given calendar day. At the beginning of each calendar day, the sequence of testing must begin with the fuel that was tested at the end of the preceding day.

(iv) For all alternatives, the engine mapping procedures and a conditioning transient cycle must be conducted after every fuel change and/or at the beginning of each day. The reference cycle generated from the reference fuel for the first test must be used for all subsequent tests.

(v) Each paired or triplicate series of individual tests must be averaged to obtain a single value that would be used in the calculations conducted in accordance with paragraph (5) of this subsection.

(D) The applicant shall submit a test schedule to the executive director at least one week prior to commencement of the tests. The test schedule must identify the days that the tests will be conducted, and must provide for conducting the test consecutively without substantial interruptions other than those resulting from the normal hours of operations at the test facility. The executive director or his designee shall be permitted to observe any tests. The party conducting the testing shall maintain a test log that identifies all tests conducted, all engine mapping procedures, all physical modifications to or operational tests of the engine, all re-calibrations or other changes to the test instruments, and all interruptions between tests and the reason for each such interruption. All tests conducted in accordance with the test schedule, other than any tests rejected in accordance with an outlier identification

and exclusion procedure included in the approved test protocol, must be included in the comparison of emissions in accordance with paragraph (5) of this subsection.

(E) In each test of a fuel, exhaust emissions of oxides of nitrogen (NO<sub>x</sub>), total hydrocarbons (THC), non-methane hydrocarbons (NMHC), and particulate matter (PM) must be measured.

(5) The average emissions during testing with the candidate fuel must be compared to the average emissions during testing with the reference fuel specified in paragraph (3) of this subsection, applying one-sided Student's *t* statistics as set forth in *Snedecar and Cochran, Statistical Methods* (7th edition), page 91, Iowa State University Press, 1980. The executive director may issue a certification in accordance with this paragraph only if the executive director makes all of the following determinations:

(A) the average individual emissions of NO<sub>x</sub>, THC, NMHC, and PM, respectively, recorded during testing with the candidate fuel are comparable or better than the average individual emissions of NO<sub>x</sub>, THC, NMHC, and PM, respectively, recorded during testing with the reference fuel; and

(B) use of any additive identified in accordance with paragraph (2)(B) of this subsection in diesel powered engines will not increase emissions of noxious or toxic substances that would not be emitted by such engines operating without the additive;

(C) in order for the determinations in subparagraph (A) of this paragraph to be made, for each referenced pollutant the candidate fuel must satisfy the following relationship.  
Figure: 30 TAC §114.315(c)(5)(C)

(6) If the executive director finds that a candidate fuel has been properly tested in accordance with this subsection, and makes the determinations specified in paragraph (5) of this subsection, then the executive director may, after consultation with the United States Environmental Protection Agency (EPA), issue an approval notification certifying that the alternative diesel fuel formulation represented by the candidate fuel may be used to satisfy the requirements of §114.312(a) of this title. The approval notification must identify all of the characteristics of the candidate fuel determined in accordance with paragraph (2) of this subsection.

(A) The approval notification must provide that the approved alternative diesel fuel formulation has the following specifications:

(i) a sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon content, and nitrogen content not exceeding that of the candidate fuel;

(ii) a cetane number not less than that of the candidate fuel; and

(iii) presence of all additives that were contained in the candidate fuel, in a concentration not less than in the candidate fuel.

(B) All such characteristics must be determined in accordance with the test methods identified in subsection (a) of this section. The approval notification must assign an identification number to the specific approved alternative diesel fuel formulation.

(d) Notwithstanding subsection (c) of this section, the executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title that may be used to satisfy the requirements of §114.312(b) and (c) of this title if the applicant has demonstrated to the satisfaction of the executive director and the EPA that the formulation will achieve comparable or better reductions in emissions of NO<sub>x</sub>, THC, NMHC, and PM.

(1) For alternative diesel fuel formulations that use an additive to achieve reductions, the applicant shall provide to the executive director upon application, the identity, chemical composition, and concentration of each additive used in the formulation, and the test method by which the presence and concentration of the additive may be determined.

(2) If the alternative diesel fuel formulation has been demonstrated to the satisfaction of the executive director to achieve comparable or better reductions in emissions of NO<sub>x</sub>, THC, NMHC, and PM under this subsection, then the executive director may issue an approval notification certifying that the alternative diesel fuel formulation may be used to satisfy the requirements of §114.312(a) of this title.

(A) The approval notification must identify the following specifications of the alternative diesel fuel formulation as approved under this subsection:

(i) the total aromatic hydrocarbon content, cetane number, and other parameters as appropriate and as determined in accordance with the test methods identified in subsection (a) of this section; or

(ii) for an alternative diesel fuel using an additive to achieve reductions, the identity, minimum concentration and treatment rate of the additive, the minimum specifications of the base fuel used in the approved formulation, and the test method or methods that must be used to satisfy the monitoring requirements of §114.316 of this title (relating to Monitoring, Recordkeeping, and Reporting Requirements).

(B) The approval notification must assign an identification number to the specific approved alternative diesel fuel formulation.

*§114.316. Monitoring, Recordkeeping, and Reporting Requirements.*

(a) Every producer or importer that has elected to sell, offer for sale, supply, or offer for supply diesel fuel that may ultimately be used in counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) is subject to the applicable requirements of this section.

(b) All records relating to low emission diesel (LED) must contain a statement declaring whether the aromatic hydrocarbon content of the sample conforms to the basic standard, to a designated alternative limit (DAL) in accordance with §114.313 of this title (relating to Designated Alternative Limits), to a limit as accepted under §114.312(e) of this title (relating to Low Emission Diesel Standards), or whether the diesel fuel conforms to an alternative diesel fuel formulation approved under §114.312(f) of this title.

(c) Each producer or importer of a diesel fuel that conforms to §114.312(a) - (e) of this title shall sample and test for the aromatic hydrocarbon content and minimum cetane number in each final blend of LED that the producer or importer has produced or imported, by collecting and analyzing a representative sample of diesel fuel taken using the methodologies specified in §114.315 of this title (relating to Approved Test Methods). The producer or importer shall maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the aromatic hydrocarbon content and minimum cetane number. All diesel fuel produced by the producer or imported by the importer and not tested as LED by the producer or importer as required by this section will be deemed to exceed the standards specified in §114.312 of this title, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits.

(d) Each producer or importer of a diesel fuel that conforms to §114.312(f) of this title shall sample and test for the appropriate components of the alternative diesel fuel formulation as listed in the approval

notification issued by the executive director under §114.315(c) or (d) of this title in each final blend of LED that the producer or importer has produced or imported, by collecting and analyzing a representative sample of diesel fuel taken from the final blend, using the methodologies specified in §114.315 of this title. If a producer or importer blends the diesel fuel components of the approved alternative diesel fuel formulation to produce a final blend of LED directly to pipelines, tank ships, railway tank cars, or trucks and trailers, the loading(s) must be sampled and tested for the appropriate components of the alternative diesel fuel formulation as approved by the executive director by the producer or importer or authorized contractor at a rate of one sample and test per 250,000 gallons of LED produced. The producer or importer shall maintain records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the content of the appropriate fuel components for two years from the date of each sampling. All diesel fuel produced by the producer or imported by the importer and not tested as LED by the producer or importer as required by this section will be deemed to exceed the standards specified in §114.312 of this title, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits.

(e) If the alternative diesel fuel formulation being sampled and tested under subsection (d) of this section contains an additive system, the final blend must be sampled and tested for the content of the appropriate fuel components of the base fuel and additive as listed in the approval notification issued by the executive director under §114.315(c) or (d) of this title, and the producer or importer or authorized contractor shall maintain records showing that sufficient additive was added to maintain the appropriate additive concentration as approved by the executive director. If the additive is approved by the executive director for use with diesel fuel produced to comply with the fuel content standards specified in 40 Code of Federal Regulations §80.510, the testing for the content of the fuel components of the base fuel is not required.

(f) A producer or importer subject to the requirements of this division shall provide to the executive director any records required to be maintained by the producer or importer in accordance with this section within 15 days of a written request from the executive director, if the request is received before expiration of the period during which the records are required to be maintained. Whenever a producer or importer fails to provide records regarding a final blend of LED in accordance with the requirements of this section, the final blend of diesel fuel will be presumed to have been sold by the producer or importer in violation of the standards specified in §114.312 of this title, to which the producer or importer has elected to be subject.

(g) All parties in the distribution chain (producer, importer, terminals, pipelines, truckers, rail carriers, and retail fuel dispensing outlets) subject to the provisions of §114.312 of this title shall maintain copies or records of product transfer documents for a minimum of two years and shall upon request, make such copies or records available to representatives of the commission, United States Environmental Protection Agency, or local air pollution agency having jurisdiction in the area. The product transfer documents must contain, at a minimum, the following information:

- (1) the date of transfer;
- (2) the name and address of the transferor;
- (3) the name and address of the transferee;
- (4) in the case of transferors or transferees who are producers or importers, the registration number of those persons as assigned by the commission under §114.314 of this title (relating to Registration of Diesel Producers and Importers);
- (5) the volume of diesel fuel being transferred;

- (6) the location of the diesel fuel at the time of transfer; and
- (7) one of the following certification statements, as appropriate:

(A) "This product is Texas low emission diesel and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel."; or

(B) "This product may not be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel without further processing."; or

(C) "This product has been produced under a TCEQ approved alternative emission reduction plan and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel."

(h) For each final blend that is sold or supplied by a producer or importer from the party's production facility or import facility, and that contains volumes of diesel fuel that the party has produced and imported and volumes that the party neither produced nor imported, the producer or importer shall establish, maintain, and retain adequately organized records containing the following information.

(1) The volume of diesel fuel in the final blend that was not produced or imported by the producer or importer, the identity of the person(s) from whom such diesel fuel was acquired, the date(s) that it was acquired, and the invoice(s) representing the acquisition(s).

(2) The aromatic hydrocarbon content and the cetane number of the volume of diesel in the final blend that was not produced or imported by the producer or importer, determined either by:

(A) sampling and testing by the producer or importer of the acquired diesel fuel represented in the final blend; or

(B) written results of sampling and test of the diesel fuel supplied by the person(s) from whom the diesel fuel was acquired.

(3) A producer or importer subject to this subsection shall establish such records by the time the final blend triggering the requirements is sold or supplied from the production or import facility, and shall retain such records for two years from such date. During the period of required retention, the producer or importer shall make any of the records available to the executive director upon request.

(i) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED in accordance with §114.312 of this title shall provide a quarterly summation report to the executive director no later than the 45th day following the end of the calendar quarter. The quarterly report must provide, at a minimum, the information required to be collected by subsections (c) - (e), and (h) of this section and a reconciliation of the quarter's transactions relative to the requirements of subsections (c) - (e), and (h) of this section. Updates or revisions to estimated transaction volumes required by subsections (c) - (e) of this section must be included in this report.

(j) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED under §114.312(e) of this title shall provide to the executive director, as applicable, a copy of the executive order issued by the California Air Resources Board (CARB) for the Certified Diesel Fuel Formulation used to produce the LED or documentation demonstrating that the LED has been produced to meet all specifications for diesel fuel under regulations adopted by the CARB, except for those approved for small refinery compliance, that were in effect as of January 18, 2005, and shall comply with the requirements of subsections (c) and (h) of this section using the fuel specifications for aromatic hydrocarbon and cetane set by this executive order or regulations.

(k) Each producer electing to sell, offer for sale, supply, or offer to supply diesel fuel in accordance with §114.318 of this title (relating to Alternative Emission Reduction Plan) shall comply with the sampling and testing requirements of subsections (d) and (e) of this section for the appropriate fuel components of the diesel upon which the projected emission reductions were based. Each producer shall provide a quarterly report to the executive director no later than the 45th day following the end of the calendar quarter. The quarterly report must provide, at a minimum, the following information:

(1) the volume of diesel fuel produced by the producer that is subject to the provisions of the alternative emission reduction plan as approved by the executive director;

(2) the volume of diesel fuel that was not produced by the producer but was sold or supplied by the producer in the counties listed in §114.319 of this title and is subject to the provisions of the alternative emission reduction plan as approved by the executive director and the identity of the persons(s) from whom such diesel fuel was acquired and the date(s) that it was acquired. The producer shall retain records of the invoice(s) representing the acquisition(s) for two years from such date; and

(3) the volume of additive (if any) utilized by the producer to produce diesel fuel that is subject to the provisions of the alternative emission reduction plan as approved by the executive director and the identity of the additive and additive manufacturer.

#### *§114.319. Affected Counties and Compliance Dates.*

(a) Affected persons in the counties listed in subsection (b) of this section shall be in compliance in accordance with the schedule listed in subsection (c) of this section with §§114.312 - 114.317 of this title (relating to Low Emission Diesel Standards; Designated Alternate Limits; Registration of Diesel Producers and Importers; Approved Test Methods; Monitoring, Recordkeeping, and Reporting Requirements; and Exemptions to Low Emission Diesel Requirements), as applicable, for diesel fuel that may ultimately be used to power a diesel-fueled compression-ignition engine in a motor vehicle or in non-road equipment.

(b) The following counties are subject to subsection (a) of this section:

(1) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant;

(2) Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller;

(3) Hardin, Jefferson, and Orange; and

(4) Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

(c) Affected persons subject to subsection (a) of this section shall be in compliance with this division according to the following schedule:



- (1) beginning October 1, 2005, for producers and importers;
- (2) beginning November 15, 2005, for bulk plant distribution facilities; and
- (3) beginning January 1, 2006, for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2005.  
 TRD-200501104  
 Stephanie Bergeron Perdue  
 Director, Environmental Law Division  
 Texas Commission on Environmental Quality  
 Effective date: March 31, 2005  
 Proposal publication date: December 31, 2004  
 For further information, please call: (512) 239-0348

## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 3. TEXAS YOUTH COMMISSION**

#### **CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION**

The Texas Youth Commission (TYC) adopts the repeal of §§85.29, 85.33, 85.35, 85.39, 85.41, 85.43, 85.45, 85.51 and 85.61; and amendments to §85.21 and §85.25, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 512).

TYC simultaneously adopts new §§85.31, 85.51, 85.55, 85.59, 85.61, 85.69, 85.71, 85.75, 85.79, 85.85, and 85.95 without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 512). Sections 85.41, 85.45, 85.65 are adopted with changes to the proposed text and will be republished. The change in §85.41 was to delete the description of the release packed documentation as a notebook with tabbed sections. Changes were also made in §85.45(b)(2) and §85.65(b)(4) to correct grammatical errors.

The justification for the repeals, amendments, and new rules is to better organize information relating to the progress, movement, and release of youth within TYC's programs.

No comments were received regarding adoption of the repeals, amendments or new rules.

#### **SUBCHAPTER B. PLACEMENT PLANNING**

##### **37 TAC §§85.21, 85.25, 85.31**

The amendments and new rule are adopted under the Human Resources Code §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendments and new rule affect the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501033  
 Dwight Harris  
 Executive Director  
 Texas Youth Commission  
 Effective date: March 27, 2005  
 Proposal publication date: February 4, 2005  
 For further information, please call: (512) 424-6014

## **CHAPTER 85. ADMISSION AND PLACEMENT**

### **SUBCHAPTER B. PLACEMENT PLANNING**

#### **37 TAC §§85.29, 85.33, 85.35, 85.39, 85.41, 85.43, 85.45, 85.51, 85.61**

The repeal is adopted under the Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted repeal affects the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501034  
 Dwight Harris  
 Executive Director  
 Texas Youth Commission  
 Effective date: March 27, 2005  
 Proposal publication date: February 4, 2005  
 For further information, please call: (512) 424-6014

## **CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION**

### **SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION**

#### **37 TAC §§85.41, §85.45**

The new rules are adopted under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family

approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted new rules affect the Human Resources Code, §61.034.

*§85.41. Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders.*

(a) Purpose. The Resocialization program is designed for youth who reasonably apply themselves to complete the program within their assigned minimum length of stay. There are, however, a small number of resistant youth who do not complete the Resocialization program within their minimum length of stay. When the length of institutional stay for these youth becomes disproportionate relative to the severity of their committing offense and level of risk to the community, provision must be made to cut short their Resocialization program in the institution and plan for their supervision and services on parole.

(b) Applicability. This rule does not apply to:

- (1) any other movement without program completion;
- (2) youth who have completed program requirements. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders);
- (3) priority 1 youth who are eligible for admission to specialized treatment programs;
- (4) youth who have been returned to high restriction through a due process hearing;
- (5) sentenced or Type A violent offenders as defined in §85.23 of this title (relating to Classification); and
- (6) youth who are unable to progress further in the agency's rehabilitation program because of mental illness or mental retardation and who have completed their minimum lengths of stay. See §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(c) Explanation of Terms Used.

- (1) General Offender--means a youth who is classified as a general offender as defined in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.
- (2) Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, and Firearms Offender--means a youth who meets the definition in §85.23 of this title and has never been classified as a sentenced or Type A violent offender.
- (3) Minimum Length of Stay--means the assigned minimum length of stay for the youth's classification, see §85.23 of this title, plus any disciplinary extensions to the minimum length of stay. See §85.25 of this title (relating to Minimum Length of Stay).
- (4) Individual Case Plan (ICP)--the individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified.
- (5) Special Services Committee (SSC) exit review--is a process by which the SSC determines whether the youth meets program completion criteria and whether the release ICP adequately addresses the youth's identified risk factors for re-offending.

(6) Release Packet--includes specific documents for review and approval prior to a youth's release. The release packet includes the following information:

- (A) psychological evaluation (if SSC determines it is necessary);
  - (B) release plan;
  - (C) home assessment, if applicable;
  - (D) incident summary;
  - (E) specialized treatment summary, if applicable; and
  - (F) victim involvement information, if applicable.
- (d) General Requirements.

(1) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(2) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(3) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(4) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(e) Criteria for Release to TYC Parole.

(1) For General Offenders. General offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title (relating to Resocialization Program), will be released to TYC parole (home or home substitute) when the following requirements are met:

- (A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the SSC exit review and during the approval process;
- (B) four (4) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A3, B3, C3;
- (C) eight (8) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A2, B2, C2; or
- (D) 12 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A1, B1, C1.

(2) For Type B Violent Offenders, Chronic Serious Offenders, Controlled Substances Dealers, and Firearms Offenders. Type B violent offenders, chronic serious offenders, controlled substances dealers, and firearms offenders who have completed their minimum length of stay, but have not earned phase 4 on all three components of Resocialization, see §87.3 of this title, will be released to TYC parole when the following requirements are met:

- (A) no confirmed Category I rule violations within 90 days prior to the SSC exit review and during the approval process;

(B) eight (8) months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A3, B3, C3;

(C) 12 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A2, B2, C2; or

(D) 18 months have elapsed since completion of the minimum length of stay and a current assessment of, at a minimum, Resocialization phase A1, B1, C1.

(f) Decision Authority for Approval of Release.

(1) The final decision authority shall approve the youth's release plan upon a determination that the youth meets the required criteria as set forth in subsection (e) of this section and the release ICP adequately addresses risk factors.

(2) A youth shall be released to TYC parole (home or home substitute) within 45 days of the SSC exit review validating release eligibility. Upon the approval by the final decision authority, additional time may be granted up to 30 days as the need indicates.

(3) The final decision authority is the Department of Sentenced Offenders Disposition, unless the superintendent or quality assurance supervisor appeals the decision. If the decision is appealed, the appropriate director of juvenile corrections is the final decision authority.

*§85.45. Movement Without Program Completion.*

(a) Purpose. The purpose of this policy is to establish criteria and procedures for movement of youth without program completion.

(b) Applicability.

(1) This rule does not apply to sentenced offenders.

(2) This rule does not apply to disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(c) General Requirements.

(1) Program staff will explain program completion criteria to every youth during orientation to each placement.

(2) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday. Refer to §85.95 of this title (relating to Discharge/Transfer of Custody).

(3) Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Transition Movements.

(1) Eligibility. Type A violent offenders and sentenced offenders are not eligible for transition movement. Youth of eligible classifications must meet transition criteria as set forth in paragraphs (2) and (3) of this subsection to qualify for a transition movement.

(2) Transition Criteria for Youth in Programs where Resocialization is Administered. Youth will be eligible for transition from a high or medium restriction (initial placement) facility to a medium restriction placement when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process, as outlined in paragraph (4) of this subsection; and

(C) completion of minimum length of stay requirements:

(i) general offenders must complete all but three (3) months of the minimum length of stay; or

(ii) Type B violent offenders, chronic serious offenders, controlled substance dealer offenders and firearms offenders must complete all but six (6) months of the minimum length of stay; and

(D) a current assessment of, at a minimum, Resocialization phase A3, B3, C3 with no main objectives or sub-objective indicators under remediation (not applicable to sex offenders with court orders deferring their sex offender registration requirements who have not previously attained phase A4, B4, C4; see §87.85 of this title); and

(E) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(3) Transition Criteria for Youth in Contract Care Programs where Resocialization is Not Administered. Youth in high restriction contract care programs where Resocialization is not administered will be eligible for transition to a medium restriction placement when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in paragraph (4) of this subsection; and

(C) completion of minimum length of stay requirements:

(i) general offenders must complete all but three (3) months of the minimum length of stay; or

(ii) Type B violent offenders, chronic serious offenders, controlled substance dealer offenders and firearms offenders must complete all but six (6) months of the minimum length of stay; and

(D) identify personal motivations for delinquent behavior; and

(E) demonstrate an understanding of their personal delinquent behavior patterns and demonstrate the ability to interrupt their offense patterns; and

(F) complete a plan that identifies goals and a plan of action to achieve goals and that identifies obstacles that will support successful re-entry into the community.

(4) Decision Authority for Approval of Transition.

(A) The final decision authority shall approve the youth's transition plan upon a determination that the youth meets all transition criteria and the transition/release ICP adequately addresses risk factors.

(B) The appropriate director of juvenile corrections must approve any modification to the transition/release plan.

(C) A youth shall be transitioned to medium restriction within 14 calendar days of the exit review, regardless of whether or not the release plan is complete. However, if the youth does not meet the program completion criteria at the time of transition or release, the youth will not be transitioned.

(D) With approval from the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, as needed to address serious concerns related to the well-being of the youth and/or the community.

(E) The final decision authority is:

(i) the superintendent, for youth assigned to TYC-operated placements; or

(ii) the quality assurance administrator, for youth assigned to contract care placements.

(e) Population Control Releases. When overpopulation occurs in any high restriction facility, certain remedial actions are taken. The deputy executive director may cancel or revise any population control measure in effect or implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(1) Overpopulation Condition.

(A) When population reaches three percent (3%) above budgeted capacity for general population (excludes youth in specialized treatment), the superintendent may invoke population control release procedures.

(B) When population reaches five percent (5%) above budgeted capacity for general population, the superintendent shall invoke population control release procedures.

(2) Release Criteria.

(A) The following youth are ineligible for population control release:

(i) Type A violent offenders;

(ii) Sentenced offenders;

(iii) Priority 1 specialized treatment youth (unless waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections); or

(iv) Sex offenders with court orders deferring their sex offender registration requirements.

(B) Youth who are eligible for release to TYC parole (home or home substitute) due to an overpopulation condition must meet the following criteria:

(i) completion of the minimum length of stay; and

(ii) a current assessment of, at a minimum, Resocialization phase A3, B3, C3 with no main objectives or sub-objective indicators under remediation. Priority should be given to those who have mastered the most objectives towards completion of A4, B4, C4 Resocialization goals.

(f) Administrative Transfers. Administrative transfers may be made among programs of equal restriction without a due process hearing. An administrative transfer shall not be made in lieu of a transfer for which a due process hearing is mandatory.

(g) Hardship Cases. In hardship cases, the deputy executive director may approve placing a youth on parole status without meeting program completion criteria.

(h) Mentally Ill and Mentally Retarded Youth. Certain youth shall be discharged following application for appropriate services to address their mental illness or mental retardation. See §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(i) Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders. Youth who do not complete the Resocialization program within the minimum length of stay, and the length of institutional stay becomes disproportionate relative to the severity of their committing offense, may be considered for movement without program completion. See §85.41 of this title (relating to Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders).

(j) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the transition or release.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501035

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: March 27, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 424-6014



## SUBCHAPTER D. PROGRAM COMPLETION

### 37 TAC §§85.51, 85.55, 85.59, 85.61, 85.65, 85.69

The new rules are adopted under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted new rules affect the Human Resources Code, §61.034.

§85.65. *Transfer of Sentenced Offenders to TDCJ-ID.*

(a) Purpose. The purpose of this rule is to establish criteria and approval process for transferring a sentenced offender youth to the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not address all types of disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to the transfer of sentenced offenders to TDCJ-Parole Division (TDCJ-PD). See §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(4) This rule does not apply to the transfer of sentenced offenders adjudicated for capital murder to TDCJ-ID. See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(5) This rule does not apply to new charges incurred by sentenced offenders while committed to Texas Youth Commission (TYC), but only to the disposition of the original determinate sentence.

(6) For discharge criteria, see §85.95 of this title (relating to Discharge/Transfer of Custody).

(c) General Restrictions. Refer to §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) for the list of general restrictions.

(d) General Requirements.

(1) Program staff will explain transfer criteria to every youth during orientation to each placement.

(2) The Special Services Committee (SSC) shall evaluate the youth's progress toward program completion criteria six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday, and at other times as requested by the committee.

(3) TYC program staff where the youth is assigned shall determine when transfer criteria have been met.

(4) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(e) Transfer Criteria.

(1) Sentenced Offender Youth Whose Parole has been Revoked. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has not completed his/her sentence; and

(C) youth's conduct indicates that the welfare of the community requires the transfer.

(2) Sentenced Offender Youth in Residential Placement. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization Program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(f) Decision Authority for Approval to Transfer. Transferring from a high restriction facility the following procedures will occur:

(1) A youth shall not be transferred to TDCJ-ID until the final decision authority has determined that the youth meets program completion requirements and the transfer plan adequately addresses risk factors.

(2) The final TYC decision authority is the deputy executive director.

(3) The deputy executive director must approve the request for a hearing by the committing juvenile court for early transfer.

(4) The final transfer approval authority for early transfer to TDCJ-ID, prior to the completion of the MPC, is the committing juvenile court.

(g) Transfer Process.

(1) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(2) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(3) Upon transfer to TDCJ-ID, the youth may bring only the following personal property items to TDCJ-ID:

(A) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(B) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the

Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(h) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) working days prior to the discharge.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501036

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: March 27, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 424-6014



## SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

### 37 TAC §§85.71, 85.75, 85.79, 85.85, 85.95

The new rules are adopted under the Human Resources Code, §61.075, which provides TYC with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rules affect the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501037

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: March 27, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 424-6014



## CHAPTER 87. TREATMENT

### SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

#### 37 TAC §§87.75, §87.79

The Texas Youth Commission (the commission) adopts amendments §87.75 Mentally Retarded Offender Program and §87.79

Discharge of Mentally Ill and Mentally Retarded Youth, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 531).

The justification for amending the sections is the availability of current and accurate agency policy. The amended sections will include updated references to sections in Chapter 85.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rules implement the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501038

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: March 27, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 424-6014



## CHAPTER 95. YOUTH DISCIPLINE

### SUBCHAPTER A. DISCIPLINARY PRACTICES

#### 37 TAC §§95.7, 95.9, 95.11, 95.17

The Texas Youth Commission (the commission) adopts amendments to §95.7 Reclassification Consequence; §95.9 Parole Revocation Consequence; §95.11 Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence; and §95.17 Behavior Management Program, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 532).

The justification for amending the sections is the availability of current and accurate agency policy. The amended sections will include updated references to sections in Chapter 85.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rules implement the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501039  
Dwight Harris  
Executive Director  
Texas Youth Commission  
Effective date: March 27, 2005  
Proposal publication date: February 4, 2005  
For further information, please call: (512) 424-6014



## CHAPTER 97. SECURITY AND CONTROL

### SUBCHAPTER A. SECURITY AND CONTROL

#### 37 TAC §§97.37, 97.40, 97.43, 97.45

The Texas Youth Commission (the commission) adopts amendments to §97.37 Security Intake; §97.40 Security Program; §97.43 Institution Detention Program; and §97.45 Protective Custody, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 534).

The justification for amending the sections is the availability of current and accurate agency policy. The amended sections will include updated references to sections in Chapter 85.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rules implement the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2005.

TRD-200501040  
Dwight Harris  
Executive Director  
Texas Youth Commission  
Effective date: March 27, 2005  
Proposal publication date: February 4, 2005  
For further information, please call: (512) 424-6014



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) adopts the repeal of the following section of Chapter 813, relating to Food Stamp Employment and Training, without changes to the proposal as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter B, Access to Employment and Training Activities and Support Services, §813.13.

The Commission adopts the following new section to Chapter 813, relating to Food Stamp Employment and Training, with changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter B, Access to Employment and Training Activities and Support Services, §813.13.

The Commission adopts the following new section to Chapter 813, relating to Food Stamp Employment and Training, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter B, Access to Employment and Training Activities and Support Services, §813.14.

The Commission adopts amendments to the following sections of Chapter 813, relating to Food Stamp Employment and Training, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter A, General Provisions, §813.1

Subchapter B, Access to Employment and Training Activities and Support Services, §813.11 and §813.12

Subchapter D, Allowable Activities, §813.32

The Commission adopts amendments to the following sections of Chapter 813, relating to Food Stamp Employment and Training, with changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter A, General Provisions, §813.2 and §813.3

Subchapter D, Allowable Activities, §813.31

Subchapter E, Support Services for Participants, §813.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. COORDINATION ACTIVITIES

PART IV. PUBLIC COMMENTS AND RESPONSES

The purpose of the adopted Chapter 813 rule changes is, in part, to improve Food Stamp Employment and Training (FSE&T) service delivery, based on available funding, by expanding services statewide.

Additionally, the adopted rule changes:

(1) establish monthly eligibility verification requirements for all FSE&T participants;

(2) require Local Workforce Development Boards (Boards) to coordinate with the Texas Health and Human Services Commission (HHSC) to provide consistent and streamlined FSE&T services;

(3) establish FSE&T good cause procedures that mirror Choices good cause procedures set forth in 40 TAC Chapter 811; and

(4) allow Boards the flexibility, based on available funding, to provide services to exempt food stamp recipients who volunteer to participate in FSE&T.

HHSC determines food stamp eligibility and who will be certified as a food stamp household member, in accordance with federal regulations.

As part of the food stamp certification process, HHSC also determines whether a food stamp household member will be registered for work and required to participate in FSE&T services or will be exempt from FSE&T participation. HHSC classifies food stamp household members as either:

(1) Mandatory work registrants-individuals who are required to register for work, that include: Able-Bodied Adults Without Dependents (ABAWDs) between 18 and 50 years of age; and food stamp household members who are 16 to 59 years of age, may have dependents, and are not exempt; or

(2) Exempt recipients-individuals who are not required to register for work because they meet federal exemption criteria. Federal exemptions include, but are not limited to, a parent or other household member responsible for the care of a dependent child under six; an individual physically or mentally unfit for employment; a regular participant in a drug addiction or alcohol treatment and rehabilitation program; or an individual who is employed or self-employed at least 30 hours per week.

Currently, Commission rule classifies food stamp household members who are 16 to 59 years of age, may have dependents, and are not exempt, as FSE&T General Population. The Commission expands the definition of FSE&T General Population to include exempt recipients.

In Federal Fiscal Year 2004 (FFY'04), Boards were allowed to provide FSE&T services only to mandatory work registrants (i.e., ABAWDs and the FSE&T General Population) in "active" FSE&T counties. In the remaining FSE&T counties, Boards were not allowed to provide FSE&T services. The rules, through the creation of full-service counties (referred to as active counties in current rule) and minimum-service counties, give Boards the flexibility to provide FSE&T services in counties where the services previously were not available. FSE&T services will be provided through Texas Workforce Centers, including satellite offices, in full-service counties and minimum-service counties, based on available funding.

#### Full-Service Counties

Mandatory work registrants who reside in full-service counties are required to participate in FSE&T services, if outreached. Exempt recipients who reside in full-service counties may voluntarily participate in FSE&T services. Full-service counties are those in which:

(1) ABAWDs, who are not working at least 20 hours per week, are outreached and receive FSE&T services;

(2) the FSE&T General Population receives FSE&T services based on available funding;

(3) mandatory work registrants shall be sanctioned (i.e., food stamp benefits are denied) for failure to cooperate with FSE&T requirements; and

(4) exempt recipients who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T requirements.

#### Minimum-Service Counties

Mandatory work registrants and exempt recipients who reside in minimum-service counties are not required to participate in FSE&T services; however, they may voluntarily participate. Minimum-service counties are those in which:

(1) food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services;

(2) Boards may provide services to food stamp recipients based on available funds;

(3) outreach is not conducted; and

(4) food stamp recipients (i.e., mandatory or exempt) who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T program requirements.

Boards must continue to serve all ABAWDs in full-service counties. In addition, Boards will have the flexibility to serve other mandatory work registrants, or exempt recipients who voluntarily participate, in both full-service counties and minimum service counties. Boards must ensure that mandatory work registrants who do not comply with their FSE&T work requirements and do not have a good cause reason for noncompliance are sanctioned. Exempt recipients who do not comply with their FSE&T work requirements and do not have a good cause reason for noncompliance may not be sanctioned, but Boards should consider whether to continue providing FSE&T services to these exempt individuals who do not participate.

The Commission also adopts amendments throughout Chapter 813 to:

(1) reflect the name change from the Texas Department of Human Services (DHS) to the Texas Health and Human Services Commission (HHSC) as required by House Bill 2292, enacted by the 78th Texas Legislature, Regular Session;

(2) change all references from E&T to FSE&T to align with other Commission policy; and

(3) improve clarity.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

### SUBCHAPTER A. GENERAL PROVISIONS

#### §813.1. Purpose.

The Commission modifies §813.1 by making technical amendments and adding language stating that the rules may be cited as the FSE&T rules.

#### §813.2. Definitions.

The Commission amends §813.2 by clarifying or correcting existing terms and adding definitions for exempt recipient, full-service counties, HHSC, minimum-service counties, and volunteer.

Section 813.2(1) clarifies the definition of ABAWD by stating that an ABAWD is a food stamp household member determined by HHSC to be a mandatory work registrant. Section 813.2(1)(D) is amended to add the phrase "at least 20 hours per week," in accordance with federal regulations, and corrects the current rule cite of 75 C.F.R. §273.24 to 7 U.S.C. §2015(o)(2)(A) - (B).

Section 813.2(2) is added to define an exempt recipient as a General Population individual who is not required to participate in FSE&T services. The Commission also clarifies in §813.2(2) that sanctions must not be imposed on exempt recipients who fail to comply with their FSE&T requirements set forth in §813.12, and already addressed in §813.2(5)(D) and §813.2(9)(D). Therefore, the new language in §813.2(2) does not change the scope of the rule but clarifies it.

Section 813.2(5) is added to define full-service counties (referred to as active counties in §813.11(c) of current rule) as counties in which Boards must ensure that: ABAWDs who are not working at least 20 hours per week are outreached and receive FSE&T



services; the FSE&T General Population receives FSE&T services, based on available funding; mandatory work registrants are sanctioned for failure to cooperate with FSE&T requirements; and exempt recipients who voluntarily participate in FSE&T services are not sanctioned for failure to cooperate.

Section 813.2(6) is amended to clarify the definition of General Population.

The Commission removes current §813.2(6), the definition of non-public assistance food stamp recipients, which is no longer relevant in this chapter.

The Commission adds new §813.2(7) to define HHSC.

Section 813.2(8) is amended to clarify the definition of mandatory work registrant.

Section 813.2(9) is added to define minimum-service counties as counties in which food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services; Boards may provide services to mandatory or exempt recipients, based on available funding, but are not required to do so; outreach is not conducted; and food stamp recipients (i.e., mandatory or exempt) who voluntarily participate in FSE&T services are not sanctioned for failure to cooperate. A technical change is made to §813.2(9) for consistency.

The definition of nonprofit organization is unchanged, but renumbered as §813.2(10), in order to be listed in alphabetical order.

Section 813.2(11) is added to define volunteer as an individual who is not required to participate, but who voluntarily participates, in FSE&T services, and includes exempt recipients in full-service counties and exempt recipients and mandatory work registrants in minimum-service counties.

#### §813.3. General Board Responsibilities.

Because the Commission is expanding FSE&T services statewide, it is imperative that individuals receiving services are eligible food stamp recipients. Therefore, the Commission adds §813.3(a)(1) to require that Boards verify food stamp eligibility for mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services before providing access to services in order to ensure that only food stamp recipients receive FSE&T-funded services. Currently, Texas Workforce Center staff is required to verify food stamp eligibility on a monthly basis for ABAWDs only and is not required to conduct such monthly verification for FSE&T General Population participants. Allowing General Population participants to continue receiving services without verifying eligibility can result in disallowed costs being incurred for providing services to an ineligible population. Therefore, the Commission requires verification of any participant's eligibility for food stamp benefits during the month in which FSE&T services are provided. Section 813.3(a)(2) is added to require that Boards ensure that mandatory work registrants, and exempt recipients who volunteer, participate in approved FSE&T activities. These activities must meet the needs and demands of local employers and prepare the participants for unsubsidized employment.

The reference in §813.3(b) to Texas Government Code §§2308.251 *et seq.* is corrected to reference Texas Government Code §§2308.301 - 2308.3165.

The Commission amends §813.3(c) by adding the words "employment" and "educational" for improved clarity and to align with §813.3(a) and (b). The Commission also adds the words "that

meet the needs of employers" to emphasize that Board management of employment, training, and educational services must focus on the expressed needs of local employers.

Section 813.3(d) is added to require that Boards coordinate with HHSC regarding referrals, good cause, sanction procedures, and fair hearings or appeals, on a regular and ongoing basis, as determined by the Boards. For example, Boards may coordinate with HHSC on special circumstances or service delivery models that HHSC hearing officers must be aware of for appeal determinations; the appeals process and the transfer of client information, including documentation and justification of a sanction request; the process for HHSC to take action on sanction requests submitted by the Boards; or the process for Board submission of reconsiderations and the HHSC process for changing the mandatory work code to exempt status. Technical amendments are made to 813.3(d) for consistency.

#### SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

##### §813.11. Board Responsibilities Regarding Access to FSE&T Activities and Support Services.

The provisions regarding the Fair Labor Standards Act (FLSA) are related to this section on Board Responsibilities and, therefore, are moved from §813.12, Participant Responsibilities.

In §813.11(b)(4), the Commission deletes the word "family" from the term "family employment plan" because this terminology is not applicable to the entire FSE&T population, specifically ABAWDs.

Section 813.11(b)(5) removes the term "mandatory work registrant" because Boards are required to monitor program requirements and activities for all food stamp recipients, including exempt recipients who voluntarily participate.

The Commission amends §813.11(c) to delete the obsolete reference to "active Food Stamp E&T" counties and replace it with the term "full-service FSE&T" counties.

The Commission also amends §813.11 by adding subsections (e) - (g) to specify Board requirements for ensuring that employment and training activities comply with FLSA. Other adopted amendments to §813.11(e) - (g) remove references to "temporary cash assistance" because temporary cash assistance is not used to determine the number of hours of participation under FLSA.

##### §813.12. Participant Responsibilities.

Amendments are made to include exempt recipients who voluntarily participate, as well as to delete provisions regarding FLSA, which were relocated to §813.11.

The Commission amends §813.12 by including exempt recipients who voluntarily participate in FSE&T services. Section 813.12(2) is amended to change the reference to §813.13 to new §813.14. Additionally, §813.12(5) is amended by replacing the term "component activity" with the word "activity" to better align with Choices terminology in 40 TAC Chapter 811. The Commission further amends §813.12 by removing §813.12(b) - (d) regarding Board compliance with FLSA, which is incorrectly placed in current rule under Participant Responsibilities. The Commission redesignates it as §813.11(e) - (g) under Board Responsibilities Regarding Access to FSE&T Activities and Support Services.

#### §813.13. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.

In order to provide consistency and support integration of workforce services, the Commission allows for good cause exceptions in certain situations for food stamp recipients who are unable to participate in FSE&T services because of circumstances that preclude participation. The Commission adopts the repeal of current §813.13 and adopts new §813.13 to establish good cause procedures for FSE&T participants. Federal regulations give states authority to determine and grant good cause when a food stamp recipient fails or refuses to comply with Food Stamp Program work requirements. Likewise, Temporary Assistance for Needy Families (TANF) regulations give states the authority to grant good cause when a TANF recipient fails or refuses to comply with TANF/Choices work requirements. Currently, FSE&T participants receive individual exemptions (i.e., long-term circumstances that prevent participation in FSE&T) or temporary exemptions (i.e., temporary circumstances that prevent participation for up to 60 days). The FSE&T good cause requirements are closely aligned with the current Choices good cause procedures in 40 TAC Chapter 811, and will eliminate temporary and individual exemptions. Technical amendments are made to §813.13(b)(3) and (c)(7)(B) to improve clarity.

#### §813.14. Special Provisions Regarding Sanctions for Noncooperation.

To better align with Choices terminology in 40 TAC Chapter 811, the Commission adds new §813.14, Special Provisions Regarding Sanctions for Noncooperation, to replace proposed repealed §813.13, Special Provisions Regarding Penalties for Noncompliance.

### SUBCHAPTER D. ALLOWABLE ACTIVITIES

#### §813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.

The Commission amends §813.31 by adding exempt recipients who voluntarily participate in FSE&T services.

The Commission further amends §813.31(1)(B)(i) by changing the redundant term "ABAWD mandatory work registrant" to "ABAWD," and by changing the word "may" to "shall" in §813.31(1)(B)(i) and (ii). Additionally, to better align with Choices terminology in 40 TAC Chapter 811, the term "component activity" is changed to "activity" in §813.31(1)(B)(i).

The Commission also removes current §813.31(1)(B)(iii), regarding Project Reintegration of Offenders (Project RIO) because Project RIO services no longer use FSE&T funds as a method of finance. However, Project RIO participants are still eligible to be co-enrolled in FSE&T, and if so, must meet all applicable FSE&T requirements.

In renumbered §813.31(1)(B)(iii), the term "components" is changed to "activities."

Section 813.31(2)(B) is modified by deleting the word "family" from the term "family employment plan" because this terminology is not applicable to the entire FSE&T population, specifically ABAWDs.

Section 813.31(3)(D) is modified to change the obsolete reference to "proprietary school" to "career school or college," in accordance with Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session.

Section 813.31(4) adds a reference to 7 U.S.C. §2015(d)(4)(B)(iv), which delineates work experience. A technical amendment is made to properly cite the Code of Federal Regulations as C.F.R.

Section 813.31(6) references the term "FSE&T state plan of operations" to provide consistent terminology throughout the chapter.

#### §813.32. FSE&T Activities for ABAWDs.

The Commission adopts technical amendments to §813.32(a) to improve clarity. Section 813.32(b) clarifies that ABAWDs who become employed at least 20 hours per week have fulfilled their work requirement under 7 U.S.C. §2015(o)(2)(A) and are no longer required to participate in FSE&T services. Additionally, subsection (b) adds the requirement that Boards shall ensure that HHSC is notified when an ABAWD obtains employment.

### SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

#### §813.41. Provision of FSE&T Support Services.

Amendments are made to this section to include exempt recipients who voluntarily participate in FSE&T services, the provision of support services for exempt recipients who volunteer for FSE&T services, and to adhere to guidance from United States Department of Agriculture, Food and Nutrition Service (USDA-FNS).

Based on guidance received from the USDA-FNS, the Commission adds §813.41(a)(1)(A) - (B) and (2)(A) - (B) to clarify that FSE&T funds may not be used to pay for support services for retaining employment. USDA-FNS has notified states that FSE&T funds may be used only for support services to help a participant get a job, but not keep a job. The Commission amends §813.41 to include §813.41(a)(2)(C)(i) - (ii) that details the provision of support services for exempt recipients who voluntarily participate in FSE&T services.

Current §813.41(b)(1) - (2) are renumbered as §813.41(a)(1)(C)(i) - (ii) and detail the provision of support services for mandatory work registrants. Current §813.41(c) is renumbered as §813.41(b) and is amended to add exempt recipients who voluntarily participate in FSE&T services and requires Boards to ensure that costs to provide transportation services are reasonable and necessary for participation in FSE&T activities and paid for based on methods and amounts determined by each Board.

### PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards and the Texas Association of Workforce Boards, in addition to discussing the proposed changes at five regional workshops.

The Commission provided the concept brief to each of these groups for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

### PART IV. PUBLIC COMMENTS AND RESPONSES

Public comments were received from:

United States Department of Agriculture, Food and Nutrition Service

Rick Allgeyer, Texas Health and Human Services Commission

Marsha Lindsey, Workforce Texoma Board

Esperanza Rocha, Lower Rio Grande Valley Workforce Development Board

The comment summaries and responses are as follows:

COMMENT: One commenter thanked the Commission for the opportunity to review and comment on the proposed rules.

RESPONSE: The Commission appreciates the commenter's support of its rulemaking process.

COMMENT: One commenter applauded the changes that align FSE&T with other welfare programs. However, the commenter believes that the addition of §813.33 gives a false impression to the general public that post-employment services will be provided to FSE&T customers when there are not sufficient funds given to the Boards to provide these services.

RESPONSE: The Commission appreciates the commenter's support of the intent to align FSE&T services with Choices.

The Commission agrees that proposed §813.33(a) could have been read to mean that post-employment services would be available in all local workforce development areas, although proposed §813.33(b) clearly stated that "Boards may provide post-employment support services . . ." (emphasis added), which was the Commission's intent, to permit Boards to design their service plan based on available funding.

However, because of recent guidance from the United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), the Commission is striking proposed §813.33 in its entirety. USDA-FNS does not currently recognize post-employment as an allowable category of service for FSE&T USDA-FNS notified states that they may not spend FSE&T funds to provide support services such as vehicle repair, tools, clothing, or transportation, to support continued employment. It is clear that the law allows the use of FSE&T funds for support services that assist individuals in obtaining employment. Based on this guidance, the Commission deletes proposed §813.33 on post-employment services and amends §813.41(a)(1)(A) - (B) and (2)(A) - (B) by specifying that support services may only be provided to assist FSE&T participants in obtaining employment, not to support continued employment.

COMMENT: One commenter requested clarification of the FSE&T outreach process and the "intent" of the 10-day outreach requirement. The commenter asked if Boards are in compliance as long as they notify the customer within 10 days of appearing in the outreach pool that they are scheduled to attend an employment planning session (EPS).

RESPONSE: The Commission does not believe that a change in rule to redefine the term outreach is necessary, but believes that clarification would be beneficial and provides the following explanation of the outreach process and the intent of the 10-day notification requirement.

The outreach process requires Texas Workforce Center staff to send a letter to all ABAWDs in full-service counties within 10 days of the ABAWD appearing in the Agency's automated reporting system's outreach pool. The intent of the 10-day notification is to ensure that ABAWDs are served as quickly as possible, not merely to notify them that they are scheduled to be served at some point in the distant future. The Commission will issue a WD Letter to provide further guidance on the outreach process.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§813.1 - 813.3

The amended rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended rules affect Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

#### §813.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) ABAWD--a food stamp household member who is determined by the Texas Health and Human Services Commission to be a mandatory work registrant and is:

- (A) classified as an able-bodied adult;
- (B) at least 18 but less than 50 years of age;
- (C) without dependents; and

(D) subject to a limitation on the receipt of food stamp benefits for three months out of 36 months if the person does not work at least 20 hours per week or participate in employment and training activities as specified in 7 U.S.C. §2015(o)(2)(A) - (B).

(2) Exempt recipient--an individual who is part of the General Population, is not required to participate in FSE&T services, as set forth in 7 U.S.C. §2015(d)(2), and shall not be sanctioned for failure to cooperate with FSE&T requirements as set forth in §813.12 of this chapter.

(3) FSE&T activities--Food Stamp Employment and Training activities as specified in §813.31 of this chapter.

(4) FSE&T support services--Food Stamp Employment and Training support services as specified in §813.41 of this chapter.

(5) Full-service counties--counties in which Boards ensure that:

(A) ABAWDs, who are not working at least 20 hours per week, are outreached and receive FSE&T services;

(B) the FSE&T General Population receives FSE&T services based on available funding;

(C) mandatory work registrants shall be sanctioned (i.e., food stamp benefits are denied) for failure to cooperate with FSE&T requirements; and

(D) exempt recipients who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T requirements.

(6) General Population--a mandatory or exempt food stamp household member who is:

- (A) at least 16 but less than 60 years of age; and
- (B) not classified as an ABAWD.

(7) HHSC--the Texas Health and Human Services Commission.

(8) Mandatory work registrant--a food stamp household member who is required to register for FSE&T services, and is:

- (A) classified as General Population; or
- (B) an ABAWD.

(9) Minimum-service counties--counties in which:

(A) food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services;

(B) Boards may provide services to food stamp recipients based on available funds;

(C) outreach is not conducted; and

(D) food stamp recipients (i.e., mandatory or exempt) who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T requirements.

(10) Nonprofit organization--any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

(11) Volunteer--an individual who is not required to participate, but who voluntarily participates, in FSE&T services, including:

(A) exempt recipients in full-service counties; and

(B) exempt recipients and mandatory work registrants in minimum-service counties.

(12) Workfare--a work-based activity that consists of placement of an ABAWD with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an ABAWD's monthly household food stamp allotment amount divided by the federal minimum wage.

#### *§813.3. General Board Responsibilities.*

(a) Role of Boards. A Board shall:

(1) ensure that food stamp eligibility is verified monthly before providing FSE&T services for mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services; and

(2) ensure that mandatory work registrants, and exempt recipients who volunteer, participate in allowable FSE&T activities. The allowable activities shall meet the needs of employers and prepare the mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services for unsubsidized employment.

(b) Board Planning. A Board shall develop, amend, and modify its integrated workforce training and services plan to incorporate and coordinate the design and management of the delivery of FSE&T activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §§2308.301 - 2308.3165 as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title (relating to Local Workforce Development Boards).

(c) Board Management. Pursuant to this chapter, and Chapter 801 of this title (relating to Local Workforce Development Boards), a Board shall coordinate workforce employment, training, and educational services that meet the needs of employers for its local workforce development area and shall incorporate and coordinate the management and strategy for FSE&T activities and support services into the comprehensive One-Stop Service Delivery Network provided to help low-income families as they move toward self-sufficiency.

(d) Coordination with HHSC. A Board shall coordinate with HHSC on a regular and ongoing basis, as determined by the Board, regarding referrals, good cause, sanction procedures, and fair hearings or appeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501085

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

Effective date: March 29, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 475-0829



## SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

### **40 TAC §§813.11 - 813.14**

The amendments and new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments and new rules affect Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

#### *§813.13. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.*

(a) Good cause applies only to mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services. A Board shall ensure that good cause is determined as provided in this chapter.

(b) A Board shall ensure that a good cause determination:

(1) is based on individual and family circumstances;

(2) is based on face-to-face or telephone contact;

(3) includes a temporary period when mandatory work registrants or exempt recipients who voluntarily participate in FSE&T services may be unable to attend scheduled appointments or participate in ongoing work activities; and

(4) is made at the time the change in circumstances is made known to the Board's service provider.

(c) For purposes of this chapter, the following reasons constitute good cause:

(1) temporary illness or incapacitation;

(2) court appearance;

(3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;

(4) no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board;

(5) distance from the home of the mandatory work registrant, or exempt recipient who voluntarily participates in FSE&T services, to the Texas Workforce Center or employment service provider requires commuting time of more than two hours a day (not including

taking a child to and from a child care facility), and the distance prohibits walking and there is no available transportation;

(6) farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date the individual notified the Board of his or her seasonal farmwork assignment;

(7) an inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent;

(B) eligible formal child care providers, as defined in Chapter 809 of this title (relating to Child Care and Development), are unavailable;

(C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and

(D) formal or informal child care within a reasonable distance from home or the work site is unavailable;

(8) an absence of other support services necessary for participation;

(9) receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(10) an individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided the mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services, engages in problem resolution through appropriate referrals for counseling and support services; or

(11) an individual is a victim of family violence.

(d) A Board shall ensure that good cause:

(1) is reevaluated at least on a monthly basis;

(2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and based on the existence of family violence, does not exceed a total of 12 consecutive months per occurrence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501086

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

Effective date: March 29, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 475-0829



#### 40 TAC §813.13

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501084

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

Effective date: March 29, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 475-0829



## SUBCHAPTER D. ALLOWABLE ACTIVITIES

### 40 TAC §813.31, §813.32

The amended rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended rules affect Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

*§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.*

The following activities may be provided for FSE&T mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, subject to the limitations specified in §813.32 of this subchapter:

(1) job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

(i) job skills assessment;

(ii) counseling;

(iii) job search skills training;

(iv) information on available jobs;

(v) occupational exploration, including information on local emerging and demand occupations;

(vi) interviewing skills and practice interviews;

(vii) assistance with applications and resumes;

(viii) job fairs;

(ix) life skills; or

(x) guidance and motivation for development of positive work behaviors necessary for the labor market; and

(B) limit the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services can spend as follows:

(i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, as described in §813.32(4)(D) of this subchapter.

(ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services shall not be enrolled:

(I) for more than four weeks of consecutive activity under this paragraph;

(II) for more than six weeks of total activity in a federal fiscal year.

(iii) Job search, when offered as part of other FSE&T program activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph if the job search activities comprise less than half of the required time spent in other activities.

(2) vocational training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) nonvocational education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

(i) a secondary school; or

(ii) a course of study leading to a high school diploma or a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, career school or college, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) work experience, as authorized by 7 U.S.C. §2015(d)(4)(B)(iv) and by the Workforce Investment Act in 20 C.F.R. §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills, that shall:

(A) occur in the workplace for a limited period of time;

(B) be made in either the private for-profit, the non-profit, or the public sectors; and

(C) be paid or unpaid;

(5) unsubsidized employment; or

(6) other activities approved in the current FSE&T state plan of operations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501087

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

Effective date: March 29, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 475-0829



## SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

### 40 TAC §813.41

The amended rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

*§813.41. Provision of FSE&T Support Services.*

(a) Boards shall ensure that FSE&T support services are provided to mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, if the support services are reasonable, necessary, and directly related to participation in FSE&T activities, as follows:

(1) Mandatory Work Registrants. Boards shall ensure that:

(A) support services are only provided to assist mandatory work registrants with participation in FSE&T activities and in obtaining employment;

(B) support services shall not be provided to assist mandatory work registrants in retaining employment; and

(C) if the monthly expenses directly related to participation by a mandatory work registrant exceed available funds, the mandatory work registrant is:

(i) exempted from further participation in an assigned FSE&T activity; or

(ii) reassigned to an FSE&T activity that will not require the provision of support services.

(2) Exempt Recipients Who Voluntarily Participate in FSE&T Services. Boards shall ensure that:

(A) support services are only provided to assist exempt recipients with participation in FSE&T activities and in obtaining employment;

(B) support services shall not be provided to assist exempt recipients in retaining employment; and

(C) if the monthly expenses directly related to participation for an exempt recipient who voluntarily participates in FSE&T services exceed available funds, the exempt recipient is:

(i) informed that assigned activities will be discontinued; or

(ii) reassigned to an FSE&T activity that will not require the provision of support services.

(b) Support services include payment or reimbursement for:

(1) child care services governed by Chapter 809 of this title;

(2) transportation services that may be provided for participating mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, if alternative transportation resources are not available to the participants. Boards shall ensure that costs to provide the transportation services are:

(A) reasonable and necessary for participation in FSE&T activities; and

(B) paid for based on the methods and amounts determined by each Board to be consistent with state policy that requires use of the most economical means of transportation to meet the FSE&T participant's needs; and

(3) work, training, or education-related items:

(A) including, but not limited to, costs for uniforms, personal safety items, or other necessary equipment, and books or training manuals provided; and

(B) excluding the cost of meals away from home.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2005.

TRD-200501088

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

Effective date: March 29, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 475-0829

◆ ◆ ◆

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Racing Commission

### Title 16, Part 8

The Texas Racing Commission has completed its review of Chapter 313, Officials and Rules of Horse Racing. This review was conducted in accordance with Section 2001.039 as published in the December 17, 2004 issue of the *Texas Register* (29 TexReg 11512).

The Commission has determined that the reasons for adopting Chapter 313 continue to exist, with amendment to certain rules. Chapter 313 specifies the officials required to supervise the conduct of a pari-mutuel horse race, the duties of those officials, the responsibilities of jockeys, and all procedures for conducting a pari-mutuel horse race, including procedures for entries, scratches, allowances, and claiming horses.

The Chapter 313 review has revealed that some rules should be amended or repealed to make racing safer for jockeys and the horses, to conform to industry standards, practice, and terminology, and to make the language internally consistent with other Commission rules. Therefore, the Commission has adopted amendments, with or without changes to the proposed text, to §313.1, §313.4, §313.22, §313.41, §313.43, §313.45, §313.53, §313.60, §313.101, §313.108, §313.110, §313.135, §313.136, §313.165, §313.166, §313.303, §313.312, §313.405, §313.505, and §313.507. The Commission repealed §313.410.

No comments were received regarding the chapter review.

This concludes the review of Chapter 313, Officials and Rules of Horse Racing.

TRD-200501169  
Nash J. Gonzales  
General Counsel  
Texas Racing Commission  
Filed: March 15, 2005



The Texas Racing Commission has completed its review of Chapter 315, Officials and Rules for Greyhound Racing, as published in the December 17, 2004 issue of the *Texas Register* (29 TexReg 11519).

The Commission has determined that the reasons for adopting Chapter 315 continue to exist, with amendment to certain rules. Chapter 315 specifies the officials required to supervise the conduct of a pari-mutuel greyhound race, the duties and responsibilities of those officials, and all procedures for conducting a pari-mutuel greyhound race, including entries, pre-race, and race procedures.

The Chapter 315 review has revealed that some rules should be amended to make racing safer for greyhounds, to conform to industry standards, practice, and terminology, and to make the language internally consistent with other Commission rules. Therefore, the Commission has adopted amendments, with or without changes to the proposed text, to §315.1, §315.2, §315.31, §315.32, §315.36, §315.37, §315.101, §315.102, §315.103, §315.107, §315.108, §315.110, §315.111, §315.201, §315.202, §315.203, §315.205, §315.210, and §315.211.

No comments were received regarding the chapter review.

This concludes the review of Chapter 315, Officials and Rules for Greyhound Racing.

TRD-200501170  
Nash J. Gonzales  
General Counsel  
Texas Racing Commission  
Filed: March 15, 2005



Texas Water Development Board

### Title 31, Part 10

Pursuant to the notice of intent to review published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 567), the Texas Water Development Board (the board) has reviewed and considered for readopting, revision or repeal 31 TAC, Part 10, Chapter 380, Alternative Dispute Resolution, in accordance with the Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections which authorizes the board to adopt rules to effectuate Government Code Chapter 2260 requires state agencies to have rules regarding alternative dispute resolution and how it applies to resolving claims of breach of contract. A contractor cannot sue the state for breach of contract without first using the agency's alternative dispute resolution process. This completes the board's review of 31 TAC Chapter 380, Alternative Dispute Resolution.

TRD-200501161  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Filed: March 15, 2005



◆ ◆ ◆

# TABLES & GRAPHICS

---

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

Figure: 16 TAC §9.10(b)

**§9.10. Employee Level Examination Requirements  
for Licenses by Category (Revised September 2005)**  
Table 1

License Categories		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
<b>Employee Level Exams Offered:</b>																	
1. Bobtail Exam (includes Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel exams) (covers leak check, lighting of appliances, regulator change-out, and thermocouple changing)						*											
2. Transport Driver Exam				*		*											
3. Engine Fuel Exam						*							*				
4. DOT Portable Cylinder Filling Exam						*	*			*	*						
5. Recreational Vehicle Technician Exam						*								*			
6. Service and Installation Exam (covers activities for the LP-gas system, plus containers and appliances)					*	*						*			*		
7. Appliance Service and Installation Exam (covers appliance activities from the appliance gas stop through the venting system)					*	*									*		
8. Motor/Mobile Fuel (Fuel Dispenser) Exam						*		*		*	*						

Figure: 16 TAC §9.52(g)

**LP-GAS MANAGEMENT-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (September 2005)**  
**Table One**

Course Number	Course Hours	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
1.1	8		Introduction to Propane	x	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations		x	x	x	x	x		
2.2	8	x	DOT Cylinders and ASME Tanks		x	x	x	x			
2.3	8	x	Bobtail Operations		x						
3.1	8	x	Residential System Layout and Design	x	x					x	
3.2	8	x	Residential System Installation	x	x						
3.3	8	x	Appliance Conversion, Installation and Venting	x	x						
3.5	8	x	Residential Appliance Controls	x	x						
3.7	8	x	Electrical Troubleshooting and Repair of Residential Gas Appliances	x	x						
3.8	8	x	Recreational Vehicle Gas Appliances								x
3.11	8	x	Residential System Inspection	x	x						
6.1	8		Regulatory Compliance for Managers	x	x	x	x	x	x	x	x
80	80		Category E Management Course	x	x	x	x	x	x	x	x
16	16	x	Category F, G, I, and J Management Course		x	x	x	x	x		

**LP-GAS EMPLOYEE-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (September 2005)**  
**Table Two**

Course Number	Course Hours	AFT	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail <sup>1</sup>	Bobtail Service & Installation <sup>2</sup>	Service & Installation	Appliance Service & Installation	RV Technician
1.1	8		Introduction to Propane	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations	x	x					
2.2	8	x	DOT Cylinders and ASME Tanks	x	x					
2.3	8	x	Bobtail Operations			x	x			
3.1	8	x	Residential System Layout and Design				x	x		
3.2	8	x	Residential System Installation				x	x		
3.3	8	x	Appliance Conversion, Installation and Venting				x	x	x	
3.5	8	x	Residential Appliance Controls				x	x	x	x
3.7	8	x	Electrical Troubleshooting and Repair of Residential Gas Appliances				x	x	x	
3.8	8	x	Recreational Vehicle Gas Appliances							x
3.11	8	x	Residential System Inspection			x	x	x	x	
80	80		Category E Management Course	x	x	x	x	x	x	x
16	16	x	Category F, G, I, and J Management Course	x	x	x	x			

<sup>1</sup> A "Bobtail" notation on a Railroad Commission LP-gas certification card indicates the individual is authorized only to operate a bobtail truck and perform leak check, lighting of appliances, regulator change-out, and thermocouple changing activities.

<sup>2</sup> A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

**COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT  
FOR MANAGEMENT-LEVEL CERTIFICATE HOLDERS (September 2005)**

**Table Three**

Course Number	Credit Hours <sup>1</sup>	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
CETP 1	8	Basic Principles and Practices	x	x	x	x	x	x	x	x
CETP 2.1	8	Propane Delivery Basics		x						
CETP 2.2	8	Operating a Bobtail to Deliver Propane		x						
CETP 2.3	8	Operating a Transport to Deliver Propane		x						
CETP 2.4	8	Operating a Cylinder Vehicle to Deliver Propane		x				x		
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks		x						
CETP 3.1	8	Maintaining ASME Tanks		x						
CETP 3.2	8	Maintaining DOT Cylinders		x	x		x	x		
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers		x	x	x	x	x		
CETP 3.4	8	Maintaining Bulk Plant Equipment		x						
CETP 3.5	8	Performing Cargo Tank Product Transfers		x						
CETP 3.6	8	Performing Railcar Product Transfers		x						
CETP 3.7	8	Maintaining DOT Intermodal Tanks		x						
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System	x	x						
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems	x	x						
CETP 5	8	Liquid Transfer System Operations		x						
CETP 6	8	Appliance Installation	x	x						
CETP 7	8	Appliance Service	x	x						
CETP 8	8	Large Industrial/Commercial Gas-Fired Equipment Connection & Service	x	x						
PERC GAS Check	8	GAS Check	x	x						

<sup>1</sup> Credit hours may not equal the total number of course hours.

**COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT  
FOR EMPLOYEE-LEVEL APPLICANTS OR CERTIFICATE HOLDERS (September 2005)**

**Table Four**

Course Number	Credit Hours <sup>1</sup>	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail <sup>2</sup>	Bobtail Service & Installation <sup>3</sup>	Service & Installation	Appliance Service & Installation	RV Technician
CETP 1	8	Basic Principles and Practices	x	x	x	x	x	x	x
CETP 2.1	8	Propane Delivery Basics			x	x			
CETP 2.2	8	Operating a Bobtail to Deliver Propane			x	x			
CETP 2.3	8	Operating a Transport to Deliver Propane			x	x			
CETP 2.4	8	Operating a Cylinder Vehicle to Deliver Propane							
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks					x		
CETP 3.1	8	Maintaining ASME Tanks					x		
CETP 3.2	8	Maintaining DOT Cylinders	x						
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers	x	x					
CETP 3.4	8	Maintaining Bulk Plant Equipment					x		
CETP 3.5	8	Performing Cargo Tank Product Transfers			x	x			
CETP 3.6	8	Performing Railcar Product Transfers							
CETP 3.7	8	Maintaining DOT IM Tanks							
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System				x	x		
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems				x	x		
CETP 5	8	Liquid Transfer System Operations			x	x	x		
CETP 6	8	Appliance Installation				x	x	x	
CETP 7	8	Appliance Service				x	x	x	
CETP 8	8	Large Industrial/Commercial Gas-Fired Equipment Connection & Service				x	x		
PERC GAS Check	8	GAS Check			x	x	x	x	

Note: The CETP 2.4, 3.6, and 3.7 courses are not accepted by the Commission for continuing education credit.

<sup>1</sup> Credit hours may not equal the total number of course hours.

<sup>2</sup> A "Bobtail" notation on a Railroad Commission LP-gas certification card indicates the individual is authorized only to operate a bobtail truck and perform leak check, lighting of appliances, regulator change-out, and thermocouple changing activities.

<sup>3</sup> A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards -- Table 1 (Revised September 2005)

Requirements	Automatic Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non- Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least 1/2" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7. Letters at least 4" high on container or 1 1/4" high on cylinder exchange or storage rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
10. Letters at least 2" high on operating end of container: WORKING PRESSURE ____ PSIG or WORK PRESS.			*	*
11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. ____ or TANK NO. ____			*	*



Figure: 16 TAC §9.403(a)

§9.403 Table--Sections in NFPA 58 Not Adopted by Reference, or Adopted With Changes, Additional Requirements, or Corrections (Revised September 2005)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
1.4.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
1.4.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas Installations, and §9.102(c), Notice of Stationary LP-Gas Installations.
1.5	additional requirement	See Commission rules §9.51, General Requirements for Training and Continuing Education, and §9.52, Training and Continuing Education Courses.
1.7.1.1	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
2.2.1.4	additional requirement	See Commission rule §9.135, Unsafe or Unapproved Containers, Cylinders, or Piping.
2.2.2.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.2.6.1	additional requirement	See Commission rules §9.140, Table 1, Uniform Protection Standards, and §9.141, Uniform Safety Requirements.
2.2.6.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
2.2.6.4	with changes	A warning label shall be applied to all cylinders of 4.2 lb (1.9 kg) to 100 lb (45.4 kg) LP-Gas capacity or less and not filled on site. The label shall include information on the potential hazards of LP-Gas.
2.2.6.5	not adopted	See Commission rule §9.140, Table 1, Uniform Protection Standards.
2.3.1.5	with changes	Cylinders with <u>4.2 lb (1.9 kg)</u> <del>4 lb (1.8 kg)</del> through 40-lb (18-kg) propane capacity for vapor service shall comply with the following: (a) - (d) (No change.)
2.3.1.6	errata	<del>Container appearances shall be maintained in operating condition:</del>
2.3.2.3	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.3.3.2(a)(5)	with changes	Overfilling prevention devices shall be required on cylinders having <u>4.2 lb</u> <del>4 lb</del> through 40 lb ( <u>1.9</u> <del>1.8</del> kg through 18 kg) propane capacity for vapor service. (See 2.3.1.5.)

Table 2.3.3.2(a)	with changes	<p>Column 1 - Cylinders, <del>4.2-lb--100-lb (1.9-kg--45.4-kg)</del> <del>2-lb to 100-lb (0.9-kg to 45.4-kg)</del> Propane Capacity for Vapor Service</p> <p>Column 2 - Cylinders, <del>4.2-lb--100-lb (1.9-kg--45.4-kg)</del> <del>2-lb to 100-lb (0.9-kg to 45.4-kg)</del> Propane Capacity for Liquid Service</p> <p>Column 3 - Cylinders, <del>4.2-lb--100-lb (1.9-kg--45.4-kg)</del> <del>2-lb to 100-lb (0.9-kg to 45.4-kg)</del> Propane Capacity for Liquid and Vapor Service</p>
2.3.3.2(b)(3) - 2.3.3.2(b)(4)	not adopted	See Commission rule §9.403(a), Exception 2.3.3.2(b)(2).
2.3.3.2(b)(1)	with changes	<p>For <u>all vapor</u> <del>withdrawal</del> openings <u>less than 1 1/4 inches in size</u>, either of the following:</p> <p>a. A positive shutoff valve that is located as close to the container as practical in combination with <u>either an excess-flow valve or a back flow check valve installed in the container, or</u></p> <p>b. <u>A pneumatically operated</u> <del>An</del> internal valve with an integral excess-flow valve or excess-flow protection, <u>or</u></p> <p>c. <u>A double back flow check filler valve.</u></p>

2.3.3.2(b)(2)	with changes	<p>(2) For <u>all liquid withdrawal</u> openings <u>1/4 inches or greater in size</u>, any of the following:</p> <p>a. A <u>pneumatically operated</u> <del>an</del> internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within 5 ft (1.5 m) of the internal valve, or a double back flow check filler valve, <u>or a positive shutoff valve in combination with a back flow check valve</u></p> <p>b. <u>An internal valve installed in containers prior to February 1, 2001, shall be equipped for pneumatically-operated remote closure and automatic shutoff using thermal (fire) actuation as described above by February 1, 2003.</u></p> <p><del>b. Internal valves installed in containers equipped for remote closure and automatic shutoff using thermal (fire) actuation as described in 2.3.3.2(b)(2)(a) by July 1, 2003</del></p> <p>c. <u>Each container</u> <del>Containers</del> equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve <u>shall be and retrofitted by February 1, 2006 July 1, 2003</u>, with one of the following:</p> <ol style="list-style-type: none"> <li>1. A pneumatically operated <del>an</del> internal valve with excess flow protection equipped for remote closure and automatic shutoff using thermal (fire) actuation <u>installed directly into the container</u></li> <li>2. A pneumatically operated <del>an</del> emergency shutoff valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed in the line downstream <u>within four feet of as close as practical to the existing</u> positive shutoff valve.</li> <li>3. A double back flow check filler valve</li> <li>4. A positive shutoff valve in combination with a back flow check valve</li> </ol> <p><u>Exception 1: Any vapor or liquid withdrawal opening 1/4 inch or larger with piping attached that exclusively provides service to stationary appliances or equipment. In lieu of an internal valve or emergency shutoff valve, this opening may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container.</u></p>
2.4.4	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
2.4.4.3	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.
2.4.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

2.4.6.3(b)	errata	(b) Hose assemblies, after the application of connections, shall have a design capability of not less than 700 psig (4.8 MPag). If a test is performed, such assemblies shall be leak tested at 120 percent of the pressures between the operating pressure and 120 percent of the maximum working pressure (350 psig (24 MPag) minimum) of the hose.
2.5.1.3(a)	errata	Materials equivalent to 2.5.1.3(a)(1) through 2.5.1.3(a)(5) in melting point, corrosion resistance, toughness and strength.
2.6.2.1	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
3.2.2.1	with changes	LP-Gas containers shall be located outside of buildings. <i>Exception No. 1: (no change.)</i> <i>Exception No. 2: Containers from 1 gal (3.785 l) to of less than 125 gal (0.5 m<sup>3</sup>) water capacity for the purposes of being filled in buildings or structures complying with Chapter 7.</i> [remainder: no changes]
3.2.2.2	additional requirement	In addition to Table 1, see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements.
3.2.2.2	not adopted	<b>Exception No. 1 and Exception No. 3 are not adopted.</b>
3.2.2.2	errata	Revise paragraph 3.2.2.2 Exception No. 4 to read: <i>Exception No. 4: The separation distances specified in Table 3.2.2.2 between containers and of buildings of other than wood-frame construction devoted exclusively to gas manufacturing and distribution operations shall be reduced to 10 ft (3m).</i>
3.2.2.2(g)	errata	Revise paragraph 3.2.2.2(g) Exception No. 2 to read: <i>Exception No. 2: Where the distance from a 2001 to 30,000 gal water capacity container to a building is in accordance with 3.11.2 and 3.11.4.</i>
Table 3.2.2.2 Note (a)	errata	Revise Table 3.2.2.2 Note (a) to read: See 3.2.2.2 Exception No. 3.
Table 3.2.2.2 Note (e)	errata	Revise Table 3.2.2.2 Note (e) to read: See 3.2.2.2(b), (c) and (e).
Table 3.2.2.2	errata	(a) Add a superscript "r" after 25 in the column "Aboveground Containers (ft)" (b) Add a new Note "r" to read: "see 3.2.2.2 Exception No. 2."
3.2.2.3	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-gas Installations.
3.2.2.8	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
3.2.4.2	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.4.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.

3.2.5	with changes	Cylinders shall be installed <u>only</u> aboveground, and shall be set upon a firm foundation of concrete, masonry, or metal <u>and or</u> be otherwise firmly secured <u>against displacement</u> . Flexibility shall be provided in the connecting piping. The requirements of 3.2.17 shall apply.
3.2.9.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.9.2(d)	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.10.2(j)	errata	<del>The location of the container shall have fixed stairs or another safe method to reach it.</del>
3.2.12.1	with changes	A two-stage regulator system, an integral two-stage regulator, or a two-psi regulator system shall be required on all fixed piping systems that serve ½-psig (3.4-kPag) appliance systems [normally operated at 11 in. w.c. (2.7 kPag) pressure]. The regulators utilized in these systems shall meet the requirements of 2.5.7. This requirement includes fixed piping systems for appliances on RVs (recreational vehicles), mobile home installations, manufactured home installations, catering vehicles, and food service vehicle installations. Single-stage regulators shall not be installed in fixed piping systems <u>on or after February 1, 2001</u> <del>from 201997</del> . <u>Single-stage regulators in good working order installed prior to February 1, 2001, may remain in service.</u>
3.2.17	additional requirement	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.18.1	with changes	All of the following shall be required for internal valves in liquid <u>and/or</u> vapor service installed on containers over 4000-gal (15.2-m³) water capacity by July 1, 2003.
3.2.18.2	with changes	Automatic shutdown of internal valves in liquid <u>and/or</u> vapor service shall be provided using thermal (fire) actuation. The thermal element shall be within 5 ft (1.5 m) of the internal valve.
3.2.18.3	with changes	At least one remote shutdown station for internal valves in liquid <u>and/or</u> vapor service shall be installed not less than 25 ft (7.6 m) or more than 100 ft (30 m) from the liquid transfer point.
3.2.19.1	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.2	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.3	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.19.6	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
3.2.24	with changes	All metallic equipment and components that are buried or mounded shall be coated or protected and maintained to minimize corrosion. <u>Corrosion protection of all other materials shall be in accordance with accepted engineering practice.</u>

3.3.3.6	not adopted	For containers at Bulk Plants and Industrial Plants, refer to 2.3.3.2.
3.3.6.1	not adopted	See Commission rule §9.140, Uniform Protection Standards.
3.4.2.1	with changes	<p>Cylinders shall be in accordance with the following requirements:</p> <p>(a) - (d) (No change.)</p> <p>(e) Cylinders with <u>LP-gas propane</u> capacities greater than 4.2 lb (1.9 kg) <del>2-lb (0.9-kg)</del> shall be equipped as provided in Table 2.3.3.2(a), and an excess-flow valve shall be provided for vapor service.</p> <p>(f) (No change.)</p> <p>(g) Cylinders having <u>LP-gas water</u> capacities greater than 4.2 lb (1.9 kg) <del>2.7-lb (1.2-kg)</del> and connected for use shall stand on a firm and substantially level surface. If necessary, they shall be secured in an upright position.</p> <p>(h) (No change.)</p>
3.4.2.4	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.4.2.7	with changes	<p>Transportation (movement) of cylinders having <u>LP-gas water</u> capacities greater than 4.2 lb (1.9 kg) <del>2.7-lb (1.2-kg)</del> within a building shall be restricted to movement directly associated with the uses covered by this section and in accordance with the following:</p> <p>(a) Valve outlets on cylinders having <u>LP-gas water</u> capacities greater than 4.2 lb (1.9 kg) <del>2.7-lb (1.2-kg)</del> shall be tightly plugged, capped, or sealed with a listed quick-closing coupling or a listed quick-connect coupling.</p> <p>(b) (No change.)</p>
3.4.4.1(b)	with changes	Cylinders having <u>an LP-gas a water</u> capacity greater than 4.2 lb (1.9 kg) <del>2.7-lb (1.2-kg)</del> shall not be left unattended.
3.4.8.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.8.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.9.2	with changes	Cylinders having <u>LP-gas water</u> capacities greater than 4.2 lb (1.9 kg) <del>2.7-lb (1.2-kg)</del> <del>normal + lb (0.5-kg)</del> LP-Gas capacity shall not be located on balconies above the first floor that are attached to a multiple family dwelling of three or more living units located one above the other.
3.7.2.2	with changes	<p>Fixed electrical equipment and wiring installed within classified areas specified in Table 3.7.2.2 shall comply with Table 3.7.2.2 and shall be installed in accordance with NFPA 70, <i>National Electrical Code</i>. The provision shall apply to vehicle fuel operations. (See Figure 3.7.2.2.)</p> <p><i>Exception: This provision shall not apply to fixed electrical equipment at residential or commercial installations of LP-Gas systems or to systems covered by Section 3.8.</i></p>
3.8.2.8(e)	with changes	The piping system shall be <del>designed</del> ; installed, supported, and secured in such a manner to minimize the possibility of damage due to vibration, strains, or wear, and to preclude any loosening while in transit.
3.9.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.

3.9.3.10	additional requirements	See Commission rule §9.140, Uniform Protection Standards, Table 1.
3.10.2.1	additional requirement	See Commission rule §9.35, Written Procedure for LP-Gas Leaks.
3.10.2.2	not adopted	Commission rules require all redundant safety features.
3.11	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
4.2.1.1	with changes	<del>Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1-5.</del> At least one qualified person shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected.
4.2.1.2	not adopted	See Commission rules in Chapter 9, Subchapter A.
4.2.3.8	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
4.2.3.8(i)	errata	Provision for anchorage and breakaway breaking shall be provided on the cargo tank vehicle side for transfer from a railroad tank car directly into a cargo tank vehicle. (See 4.3.2.19.6)
Tables 4.4.2.2(a) and (b)	errata	Revise the note to tables 4.4.2.2(a) and (b) to read: See 4.4.3.3(a)
4.4.3.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
4.4.3.2	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: <del>(1) Cylinders of less than 200-lb (91-kg) water capacity that are not subject to DOT jurisdiction</del> (1) <del>(2)</del> Cylinders of 101 lb LP-gas capacity <del>200-lb (91-kg) water capacity</del> or more (2) <del>(3)</del> Cargo tanks or portable tank containers complying with DOT specifications MC-330, MC-331, or DOT 51 (3) <del>(4)</del> ASME and API-ASME containers complying with 2.2.1.3 or 2.2.2.2
5.2.1.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.3.1	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
5.4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
5.4.2.1	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
5.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.

Table 6.2.2.7	errata	Change the heading of the first column from "lb w.c." to "lb".
6.3.6	with changes	Painting and Marking Liquid Cargo Vehicles. Painting of cargo vehicles shall comply with 49 Code of Federal Regulations, Section 178.337-1 <u>Code of Federal Regulations, Title 49, Part 195</u> . Placarding and marking shall comply with 49 CFR, Section 172, Subparts D and F, respectively <u>CFR 49</u> .
6.5.2.1	with changes	<i>Exception (b): Valves and fittings shall be protected by a method approved by the authority having jurisdiction to minimize the possibility of damage.</i>
8.1.3	not adopted	See Commission rules §9.51, General Requirements for Training and Continuing Education, and §9.52, Training and Continuing Education Courses.
8.2.2.1(e)(1)	errata	250 psig (1.7 MPag) or 312.5 psig (2.2 MPag) where required if constructed prior to April 1, 2001.
8.2.3(l)	with changes	Where an overfilling prevention device is installed on an engine fuel container, venting of gas through a fixed maximum liquid level gauge shall not be required provided: 1. The OPD is verified by the owner of the vehicle to be working properly; 2. The verification of the valve is documented yearly and clearly marked on the container in a visible location; and 3. The OPD is replaced every two years, documentation is kept by the owner of the vehicle, and the container is marked in a visible location verifying its replacement.
8.2.6.6	with changes	Fuel containers shall be securely mounted to prevent jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to withstand without permanent visible deformation static loading in any direction equal to four times the weight of the container filled with fuel. This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer, original vehicle manufacturer, or the authorized representative of either. Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.
8.2.8.1	with changes	The piping system shall be designed, installed, supported, and secured in such a manner to minimize damage due to expansion, contraction, vibration, strains, and wear.
8.2.10	with changes	Each over-the-road general-purpose vehicle powered by LP-Gas shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (on the truck lid of a vehicle so equipped, but not on the bumper of any vehicle) inboard from any other markings. The label shall be approximately 4 3/4 in. (120 mm) long by 3 1/4 in. (83 mm) high. The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black or Pantone 2945 C Royal Blue or equivalent background. (See Figure 8.2.10.)
Chapter 10	not adopted	Commission authority does not extend to marine shipping and receiving activities.
13.1.2.8	errata	Delete "ICC, Rules for Construction of Unfired Pressure Vessels."



Appendix A	additional requirement	See Commission rule §9.137, Inspection of Cylinders at Each Filling, and CGA Publication C-6 or C-6.3 for further information regarding cylinder inspection.
A.3.2.12.8	errata	Revise paragraph A.3.2.12.8 to read: A.3.2.12.8 Two-psi regulator systems operate with 2 psi (13.8 kPa) downstream of the 2-psi service regulators to the line pressure regulator, which reduces the pressure to an appropriate inches-of-water-column pressure.
A.3.10.2.2	errata	Substitute "exposures" for "expenses" in (5) and substitute "designated" for "designed" in (6).
A.5.5	errata	Revise paragraph A.5.5 to read: See 3.10.2.5
F.5.2.3	errata	Revise paragraph F.5.2.3 to read: F.5.2.3 Percentage values, such as in the example in F.5.2.2, are rounded off to the next lower full percentage point, or to 80 percent in this example.
Figure I.1(a) Note 2	errata	In Figure I.1(a) Note 2, substitute "3.2.2.2(e)" for "3.2.2.2(d)".
Figure I.1(b) Note 2	errata	In Figure I.1(b) Note 2, substitute "3.2.2.2(d)" for "3.2.2.2(c)".
Figure I.1(b) Note 3	errata	In Figure I.1(b) Note 3, substitute "3.2.2.2 Exception No. 2" for "3.2.2.2(e)".
Figure I.1(c) Note 1 & 2	errata	In Figure I.1(c) Notes 1 and 2, substitute "3.2.2.2 Exception No. 3" for "3.2.2.2(f)".

Figure: 16 TAC §401.315(f)(3)(A)

Match Field 1	Match Field 2	Odds	Prize Category	Percentage of Prize Fund
5	1	1:175,711,536	Jackpot	63.6
5	0	1:3,904,701	Second	12.8
4	1	1:689,065	Third	2.90
4	0	1:15,313	Fourth	1.96
3	1	1:13,781	Fifth	2.18
2	1	1:844	Sixth	2.38
3	0	1:306	Seventh	4.58
1	1	1:141	Eighth	4.26
0	1	1:75	Ninth	5.34
Reserve				0
Totals		1:39.89		100

Figure: 30 TAC §114.315(c)(5)(C)

$$\bar{X}_C < \bar{X}_R + \delta - S_p \cdot \sqrt{1/n} \cdot t(a, 2n-2)$$

- Where:
- $\bar{X}_C$  = Average emissions during testing with the candidate fuel.
  - $\bar{X}_R$  = Average emissions during testing with the reference fuel.
  - $\delta$  = Tolerance level equal to 1 percent of  $\bar{X}_R$  NO<sub>x</sub>, and 2% of  $\bar{X}_R$  for total hydrocarbons (THC), non-methane hydrocarbons (NMHC), and particulate matter (PM).
  - $S_p$  = Pooled standard deviation.
  - $t(a, 2n-2)$  = The one-sided upper percentage point of t distribution with  $a = 0.15$  and  $2n-2$  degrees of freedom.
  - $n$  = Number of tests of candidate and reference fuel.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Notice of Settlement of a Texas Solid Waste Disposal and Clean Air Acts Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal and Clean Air Acts. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in *Harris County, Texas and the Texas Commission on Environmental Quality v. Lawrence Wood, individually dba Wood Resources, Robert James McAdams, and Hugh Pryor McAdams*, Cause No. 2001-58093, 157th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act and Texas Clean Air Act at a mulching and composting site in Harris County, Texas. The Defendants are Lawrence Wood, the site's operator, and Hugh and Robert McAdams, the site's owners. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. It also seeks restitution for Harris County's fire fighting costs associated with extinguishing a 21 day fire at the site. The Solid Waste Disposal Act violations are for storage and disposal of waste without a permit and operation of a dangerous or nuisance mulching/composting site. The Clean Air Act violations are for illegal outdoor burning and air nuisance.

Nature of Settlement: The settlement awards \$90,000.00 in civil penalties and \$60,000.00 in attorney's fees to the State and \$90,000.00 in civil penalties and \$60,000.00 in attorney's fees to Harris County. It also awards \$2,475,414.80 to Harris County, Texas for costs associated with extinguishing a fire at the site. The settlement also enjoins Wood and the McAdams to comply with the Texas Solid Waste Disposal Act and the Texas Clean Air Act.

For a complete description of the proposed settlement, the complete proposed Interlocutory Agreed Final Judgments that will comprise the Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication you may contact A.G. Younger, Agency Liaison, at 512-463-2110.*

TRD-200501166

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: March 15, 2005

## Texas Building and Procurement Commission

### Request for Proposal

RFP Number: #303-5-10830

Opening Date/Time: April 12, 2005 at 3:00 PM

Description: Lease requirement for approximately 4,635 sq. ft. of Office Space for Driver's License and Testing Facility in San Antonio, Bexar County, Texas

Agency: Texas Department of Public Safety (TDPS)

Purchaser/Contact: Kenneth Ming (512) 463-2743  
or through the Electronic State Business Daily at:  
[http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=57947](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57947)

TRD-200501083

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: March 9, 2005

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 4, 2005, through March 10, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 16, 2005. The public comment period for these projects will close at 5:00 p.m. on April 14, 2005.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Orange County Navigation District; **Location:** The project site is located in wetlands adjacent to Cow Bayou, north of Bridge City, from just north of State Highway 87 to the confluence of Cow Bayou, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 419260; Northing: 3324041. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map

entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 0.56 acre of wetlands and to properly permit the unauthorized excavation of 0.45 acre of open water habitat to construct a ditch necessary to facilitate and improve regional drainage. The 0.56-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent marsh habitat. The open water area that was affected is also tidal. The total length of excavation for the drainageway was approximately 1,277 linear feet. Approximately 297 feet was excavated through uplands while the remaining 980 linear feet was excavated across tidal emergent wetlands. Approximately 748.8 cubic yards of sandy/silty clay material was excavated from approximately 0.45 acre of wetlands below the high tide line. The excavated materials were subsequently placed into approximately 0.56 acre of adjacent marsh. A total of 1.01 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 2.80 acres of tidal emergent marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied as mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. CCC Project No.: 05-0164-F1; Type of Application: U.S.A.C.E. permit application #23658 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Adams Bayou, east of Beaumont and west of Rose City, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 427014; Northing: 3326259. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 0.78 acre of wetlands and to properly permit the unauthorized excavation of 1.60 acres of open water habitat associated with maintenance dredging of Adam's Bayou Lateral #1. The work was necessary to facilitate and improve regional drainage. The total length of maintenance dredging of the existing drainage was approximately 3,429 linear feet. The dredging activity resulted in the excavation of approximately 2,662 cubic yards of silty-clay material all of which was subsequently discharged into 0.78 acre of jurisdictional wetlands. The 0.78-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent and forested marsh habitat. The open water area that was affected is also tidal. A total of 2.38 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 4.68 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project

No.: 05-0165-F1; Type of Application: U.S.A.C.E. permit application #23659 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Adams Bayou, east of Beaumont and south of Rose City, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 426988; Northing: 3326326. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 1.04 acre of wetlands and to properly permit the unauthorized excavation of 1.38 acres of open water habitat associated with maintenance dredging of Adam's Bayou Lateral #2. The work was necessary to facilitate and improve regional drainage. The total length of maintenance dredging of the existing drainage was approximately 3,000 linear feet. The dredging activity resulted in the excavation of approximately 2,296 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 1.03 acre of jurisdictional wetlands. The 1.03-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent marsh and freshwater forested marsh habitat. The open water area that was affected is also tidal. A total of 2.41 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 6.22 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0166-F1; Type of Application: U.S.A.C.E. permit application #23660 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Cow Bayou, west of Dupont Drive, near the town of Cove, from the railroad spur to the confluence of Cow Bayou, east of Beaumont and south of Rose City, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orange, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 429003; Northing: 3327421. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 0.28 acre of wetlands and to properly permit the

unauthorized excavation of 0.50 acre of open water habitat associated with the dredging of Water Tank Ditch. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 1,102 linear feet. The dredging activity resulted in the excavation of approximately 807 cubic yards of silty clay material, all of which was subsequently sidecast and discharged into 0.28 acre of jurisdictional wetlands. The 0.28-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent marsh and freshwater forested marsh habitat. The open water area that was affected is also tidal. A total of 0.77 acre of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 1.66 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W.D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0167-F1; Type of Application: U.S.A.C.E. permit application #23661 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Adams Bayou, east of Strickland Drive (State Highway 358), southeast of Pinehurst and just west of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 426371; Northing: 3330240. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 1.20 acres of wetlands and to properly permit the unauthorized excavation of 1.20 acres of open water habitat associated with the excavation of Hudson Gully. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage-way was approximately 1,750 linear feet. The dredging activity resulted in the excavation of approximately 1,936 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 1.20 acres of jurisdictional wetlands. The 1.20-acre wetland area that was impacted as a result of the activity is characterized as a freshwater forested wetland. The open water area that was affected is tidally influenced. A total of 2.40 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 8.40 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of this 100-acre tract, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project

No.: 05-0169-F1; Type of Application: U.S.A.C.E. permit application #23663 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Adams Bayou, north of MacArthur Drive (State Highway 87), from the shopping center parking lot to the confluence with Adams Bayou, near the town of Bland, east of Beaumont and south of Rose City, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 427410; Northing: 3329494. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 0.28 acre of wetlands and to properly permit the unauthorized excavation of 0.28 acre of open water habitat associated with the excavation of the MacArthur Shopping Center Ditch. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 500 linear feet. The dredging activity resulted in the excavation of approximately 452 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 0.28 acre of jurisdictional wetlands. The 0.28-acre wetland area that was impacted as a result of the activity is characterized as a freshwater forested wetland. The open water area that was affected is also freshwater. A total of 0.56 acre of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 1.96 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0168-F1; Type of Application: U.S.A.C.E. permit application #23662 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Camelot Ditch, east of Strickland Drive (State Highway 358), from 31st Street to the confluence with Adams Bayou, southeast of Pinehurst and just west of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 426027; Northing: 3330765. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170.

**Project Description:** The applicant is requesting authorization to retain fill material that was discharged into 0.66 acre of wetlands and to properly permit the unauthorized excavation of 0.66 acre of open water habitat associated with the dredging of Camelot Ditch. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 970 linear feet. The dredging activity resulted in the excavation of approximately 710 cubic yards of silty clay material, all of which was subsequently sidecast and discharged into 0.66 acre of jurisdictional wetlands. The 0.66-acre wetland area that was impacted as a result of the activity is characterized as a freshwater forested wetland. The open water area that was affected is tidally influenced. A total of 1.32 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, the applicant has planted 210 Cypress, 210 Water Oak, and 210 Tupelo saplings onsite. In addition, approximately 4.62 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W.D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0170-F1; Type of Application: U.S.A.C.E. permit application #23664 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to a tributary of Meyer Bayou, from its confluence with Bessie Heights Marsh to just north of FM 105, south of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 402280; Northing: 3329666. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. **Project Description:** The applicant is requesting authorization to retain fill material that was discharged into 1.67 acres of wetlands and to properly permit the unauthorized excavation of 1.68 acres of open water habitat associated with the maintenance dredging of School House Ditch. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 5,842 linear feet. The dredging activity resulted in the excavation of approximately 3,977 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 1.67 acres of jurisdictional wetlands. The 1.67-acre wetland area that was impacted as a result of the activity is characterized as a freshwater forested wetland. The open water area that was affected is tidally influenced. A total of 3.35 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, the applicant has planted 335 Cypress and 335 Tupelo saplings onsite. In addition, approximately 11.69 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site

currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0171-F1; Type of Application: U.S.A.C.E. permit application #23665 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Dupont Ditch, from its confluence with Adams Bayou to FM 2177, south of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 426853; Northing: 3326142. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. **Project Description:** The applicant is requesting authorization to retain fill material that was discharged into 0.48 acres of wetlands and to properly permit the unauthorized excavation of 0.64 acres of open water habitat associated with the maintenance dredging of Dupont Ditch. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 1,403 linear feet. The dredging activity resulted in the excavation of approximately 1,065 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 0.48 acres of jurisdictional wetlands. The 0.48-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent and forested marsh. The open water area that was affected is also tidally influenced. A total of 1.12 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 2.88 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0172-F1; Type of Application: U.S.A.C.E. permit application #23666 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Patillo Bayou Tributary, from just south of FM 1006 and east of State Highway 87, to its confluence with Cow Bayou, south of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 423386; Northing: 3324020. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the

U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 2.00 acres of wetlands and to properly permit the unauthorized excavation of 2.48 acres of open water habitat associated with the maintenance dredging of Patillo Bayou Tributary. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 4,338 linear feet. The dredging activity resulted in the excavation of approximately 4,000 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 2.00 acres of jurisdictional wetlands. The 2.00-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent and forested marsh. The open water area that was affected is also tidally influenced. A total of 4.48 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 10 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0173-F1; Type of Application: U.S.A.C.E. permit application #23667 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Orange County Navigation District;** Location: The project site is located in wetlands adjacent to Big Marie Gully, from just east of FM 408 on the south side of Orangefield, to its confluence with Cow Bayou, south of the City of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 418622; Northing: 3324784. The proposed mitigation site is located in an open water area, in the Rose City Oil Field, East of the Neches River and south of Rose City, in Orange County, Texas. The mitigation site can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 401625; Northing: 3329170. Project Description: The applicant is requesting authorization to retain fill material that was discharged into 4.12 acres of wetlands and to properly permit the unauthorized excavation of 3.29 acres of open water habitat associated with the maintenance dredging of Big Marie Gully. The work was necessary to facilitate and improve regional drainage. The total length of excavation within the drainage way was approximately 7,180 linear feet. The dredging activity resulted in the excavation of approximately 5,307 cubic yards of silty-clay material, all of which was subsequently sidecast and discharged into 4.12 acres of jurisdictional wetlands. The 4.12-acre wetland area that was impacted as a result of the activity is characterized as tidally influenced emergent marsh. The open water area that was affected is also tidal. A total of 7.41 acres of waters and jurisdictional wetlands were impacted as a result of the project. To compensate for impacts to the aquatic environment, approximately 4.10 acres of tidal emergent and forested marsh habitat will be created within a 100-acre tract known as the W. D. Rogers Mitigation Tract. Of these 100 acres, 55 acres will be applied toward mitigation for a number of unauthorized impacts that have occurred throughout the

Orange County area. The mitigation site currently consists of tidally influenced open water habitat that would be restored to emergent and forested marsh. A series of islands would be created within the 55-acre mitigation area. These islands would be constructed to elevations conducive to hydrophytic vegetation of both emergent wetland species and forested species. CCC Project No.: 05-0174-F1; Type of Application: U.S.A.C.E. permit application #23668 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Allegro North Condominiums;** Location: The project is located at 620 South Fulton Beach Road, Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 693427; Northing: 3104303. Project Description: The applicant proposes to retain an unauthorized retaining wall with associated backfill and 5 timber groins placed in tidal waters of Aransas Bay. The retaining wall is 220 feet long and 32 inches high, and consists of solidified concrete bags stacked four bags high. Approximately 318 cubic yards of fill sand were used to backfill approximately 0.06 acre of jurisdictional waters of the United States subject to both daily (240 square feet) and seasonal (2,230 square feet) tides. The length of the five groins, numbered in the plans 1 through 5, are: 19.3 feet; 52.8 feet; 55 feet; 88.8 feet; and 69.5 feet, consecutively. The purpose of the project was to control ongoing erosion and to restore shoreline area lost due to erosion from recent storm events. No wetlands or other special aquatic sites were impacted by the project. CCC Project No.: 05-0181-F1; Type of Application: U.S.A.C.E. permit application #23446 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: City of Corpus Christi;** Location: The project consists of approximately 5.6 linear miles of pipeline. The pipeline would begin at the intersection of Rodd Field and Yorktown Roads and proceed parallel with Yorktown Road, along the south side of the road, to Waldron Road. At Waldron Road the pipeline alignment would turn to the southwest and proceed along the east side of the road to the edge of the Barney Davis Power Plant property where it would turn 90 degrees to the southeast. The alignment would proceed along the edge of the power plant property (the south edge of Tracts 529, 530, and 531) and connect with Easy Street and eventually with Whiteley Road. The pipeline would terminate at the end of Whiteley Road. The project can be located on the U.S.G.S. quadrangle maps entitled: Oso Creek NE, TX and Pita Island, TX, Texas. Approximate UTM Coordinates in NAD 27 (meters): Beginning at: Zone 14; Easting: 661097; Northing: 3059535. First turn: Zone 14; Easting: 666740; Northing: 3059460. Second Turn: Zone 14; Easting: 666360; Northing: 3055780. Terminus: Zone 14; Easting: 667860; Northing: 3054975. Project Description: The applicant proposes to install a water transmission pipeline consisting of 42" interior diameter pipe (48" exterior diameter). The pipeline would traverse the Cayo del Oso, a navigable waterway, along Yorktown Road, and 7 other areas within its alignment that are considered USACE Section 404 jurisdictional wetlands. Approximately 3,000 feet west of the Cayo del Oso, the pipeline alignment would traverse 80 feet of forested wetland that are connected to a tributary of the Cayo del Oso. The applicant proposes to directionally bore the pipeline underneath this forested wetland so that the wetland would not be affected. West of the forested wetland, approximately 1,630 feet of the proposed alignment crosses the Cayo del Oso and wetlands adjacent to it. The proposed width of the work corridors in the navigable waters

of the Cayo del Oso and all wetlands is 50 feet. The applicant proposes to construct this portion of the pipeline using an open-trenching method where excavation equipment is placed atop mats and excavated material would be temporarily sidecast and used to refill the trench. Excess material remaining once the pipe is in place would be transported to the City's material stock-pile at the J. C. Elliott landfill to use as cover. The applicant proposes to place at least 5.0 feet of cover atop the pipeline so that the bottom depth of the proposed cut would be a minimum of 9.0 feet below grade or channel bottom. To traverse the navigable portion of the Cayo del Oso, the applicant proposes to excavate as far into the navigable waterway that land-based equipment will reach. Then, the applicant proposes to trench the remainder (middle portion) of the navigable waterway using floating marine equipment (barges) deployed from land. The material excavated from construction in navigable waters would be placed atop a barge and transported to shore where it would be added to other sidecast material. During construction in navigable waters, the applicant proposes to use turbidity curtains constructed of impervious material with a flotation collar and a weighted skirt that reaches the bottom of the water column on either side of the work corridor where mechanical trenching would be done. Construction would involve disturbance of approximately 0.78 acres of substrate that may be conducive to seagrass growth, as it has been observed in the construction corridor during one site visit and not observed during other visits. Upon completion of construction, the applicant proposes to restore wetlands and the Cayo del Oso's channel bottom to pre-construction contours and elevations. Other jurisdictional crossings along the proposed route would be installed by open-trenching. Construction of the pipeline would require temporary impacts to wetlands associated with construction and equipment use in the work corridor. Construction activities would occur in 1.46 acres of wetlands, and 0.8 acre of navigable water with the remainder of the installation on uplands. CCC Project No.: 05-0182-F1; Type of Application: U.S.A.C.E. permit application #23655 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: BOSS Exploration & Production Corporation;** Location: This project proposal is known as Well #1 in State Tract (ST) 391. The project is located in Corpus Christi Bay in ST 391, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683247; Northing: 3076551. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 05-0183-F1; Type of Application: U.S.A.C.E. permit application #23698 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: BOSS Exploration & Production Corporation;** Location: This project proposal is known as Well #1 in State Tract (ST) 391. The project is located in Corpus Christi Bay in ST 391, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683247; Northing: 3076551. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling,

production, and transportation activities. Such activities include installation of typical marine barges and keyways. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot wellhead and platform with a USCG navigational light atop it. CCC Project No.: 05-0184-F1; Type of Application: U.S.A.C.E. permit application #23697 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: BOSS Exploration & Production Corporation;** Location: This project proposal is known as Well #1 in State Tract (ST) 392. The project is located in Corpus Christi Bay in ST 392, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682736; Northing: 3077268. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 05-0185-F1; Type of Application: U.S.A.C.E. permit application #23699 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: BOSS Exploration & Production Corporation;** Location: This project proposal is known as Well #2 in State Tract (ST) 392. The project is located in Corpus Christi Bay in ST 392, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683196; Northing: 3077062. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 05-0186-F1; Type of Application: U.S.A.C.E. permit application #23700 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Cameron County Parks System;** Location: The project is located on the Laguna Madre at Isla Blanca Park, South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683750; Northing: 2884850. Project Description: The applicant proposes to dredge an access channel and construct a concrete boat ramp and docks. The access channel would begin at the boat ramp and extend 178 feet west and be 49 feet wide. Approximately 320 cubic yards of broken concrete from previous boat ramps on the site would be removed from the channel/ramp/dock site and from the adjoining shoreline area of the park. Approximately 1,200 cubic yards of sand would be mechanically dredged from the channel and boat dock/launch site to achieve a depth of -5.0 feet. All excavated material would be removed to an upland disposal site north of Andy Bowie County Park. The docks would be located along each side of the boat ramp and would consist of two concrete panels that would be filled with approximately 31 cubic yards of select sand and covered with a concrete cap that would also serve as the walkway for the dock. The docks would be 84 feet long from



the MHT elevation and 5 feet wide. The boat launch would be 15 feet wide and would extend 75 feet bayward from the mean high tide elevation. A cofferdam being evaluated under Nationwide Permit (NWP) 33 would be used to prepare the site for concrete pouring. A bulkhead being evaluated under NWP 13 would be constructed along the shoreline on either side of the ramp. No hydrophytic vegetation is reported to be present at the proposed site. CCC Project No.: 05-0188-F1; Type of Application: U.S.A.C.E. permit application #23515 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Occidental Chemical Corporation;** Location: The project site for the proposed LNG facility is located off Highway 361 near Ingleside, San Patricio County, Texas, approximately 10 miles northeast of Corpus Christi, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 672888; Northing: 3083735. The proposed 26.4-mile-long San Patricio Pipeline (pipeline) route would begin on the LNG facility (at the San Patricio Pipeline Meter Station) at the aforementioned coordinates. The route would run through Aransas Pass, Gregory, Taft, and Sinton East Quadrangles and terminate at the TGP Meter and Regulating Station in the Sinton West Quadrangle at Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 645960; Northing: 3109211. Project Description: The applicant proposes to construct, operate, and maintain structures and equipment necessary for a LNG receiving and transportation facility. The project is designed for the importation, storage, and delivery of foreign-source LNG to natural gas markets. By using a cogeneration system, the project would provide a source of LNG to southern Texas and beneficially use waste heat and share infrastructure with the adjacent OxyChem facility to result in fewer impacts to the environment. Situated next to OxyChem's Ingleside chemical manufacturing facility, the majority of the project would be on land dedicated for industrial activities since the construction of the chemical manufacturing facility in 1972. The project would consist of three primary components: the Ingleside Energy Center LLC (IEC) marine terminal and storage facility, relocation of the existing VCM OxyChem dock originally permitted under Department of the Army Permit Number 10088(04) and the San Patricio Pipeline LLC (SPP). Construction of the marine import terminal would involve the following elements: 1) excavation of the slip; 2) shoreline protection for the slip; 3) construction of a new LNG dock; 4) dredging of a maneuvering basin; 5) the dredging for access to the relocated dock; 6) the relocation of the existing OxyChem VCM dock; 7) dredge material placement; and 8) maintenance dredging of the new ship dock for the IEC. Marine Import Terminal Elements: Terminal Facilities: The LNG terminal would be constructed on 77 acres of a 1,196-acre site owned by Occidental Chemical. The LNG terminal facilities would consist of a ship unloading facility (marine terminal, ship maneuvering area, and one ship berth), two LNG storage tanks, vaporization and vapor handling system, and support buildings and piping structures. Field surveys of the site confirmed the absence of wetlands on the project site itself although there were drainage ditches that were not considered to be jurisdictional wetlands because they were constructed in support of the stormwater drainage system of the OxyChem facility. Excavation of the Slip: The LNG ship berth would be excavated and dredged within a 19-acre upland area at the terminal site and oriented perpendicular to the La Quinta Channel so that LNG ships would not affect ship traffic in the channel. The berth would be approximately 750 by 1,400 feet and be dredged to a minimum depth of minus 43 feet mean low tide (MLT) to accommodate LNG ships with storage capacities up to 250,000 cubic meters of LNG per ship and drafts up to 40 feet. About 1,719,400 cubic yards of material would be removed from the proposed LNG ship berth area. Of this amount, about 320,000 cubic yards of material would be removed as

dry excavation. The side slopes of the newly constructed berth would be at a 2:1 slope. The lower portion of the slopes, between 30 and 43 feet below MLT, would be in sandy areas that would be susceptible to erosion. Shoreline Protection Requirements for the Slip: Shoreline protection would be provided as required to protect key areas from the LNG ship prop wash. Shoreline in the vicinity of the new LNG dock would be protected by the installation of an eight-inch thick articulate concrete block mat. The matting would be placed on the lower portion of the north slope from 5 feet below MLT to the bottom of the slope. Erosion protection would not be required on the south side of the LNG ship berth. Construction of a new LNG Dock: The dock would consist of a pile-supported reinforced concrete loading platform and approach trestle, pipe way supported on concrete sleepers, breasting structures, mooring structure, and catwalks. A total of six mooring dolphins and four breasting dolphins would be supported on steel pipe piles with concrete caps. The central platform would contain three off-loading arms and a boil-off gas (BOG) return line. The dock size would accommodate ships from 71,500-cubic meters to 250,000-cubic meters cargo capacity. Dredging of a maneuvering basin: A maneuvering basin would be constructed in front of the slip in the existing La Quinta Channel. The construction would require the dredging of a 40-acre area owned by the Port of Corpus Christi Authority (PCCA) in La Quinta Channel. The basin would be dredged to a minimum of minus 43 feet MLT, two feet shallower than the existing channel, and would be roughly 1,460 feet in diameter centered approximately on the middle of the channel. About 1,365,300 cubic yards of material would be dredged from the La Quinta Channel for the Ingleside Energy Center LNG Terminal maneuvering area. The maneuvering basin is partially within Nueces County. Dredging for access to the relocated dock. Approximately 582,300 cubic yards of sediments will be dredged resulting in an operating depth of approximately minus 42 feet MLT when the loading dock is relocated. Relocation of the existing OxyChem dock: The existing VCM dock, together with associated piping and equipment, would be relocated approximately 2,000 feet northwest of its current location. Currently there is an existing barge dock terminal located at this site. Current construction planning will not necessitate obtaining more land. The relocated VCM dock would be set up in the same configuration and orientation to the La Quinta Channel as it is currently configured and oriented. Dredge Spoils Disposal: The dredge materials would be placed in either Dredged Material Placement Area Number 13 (DMPA-13) owned by the PCCA or on old settlement ponds on the Reynolds Metal Company property north of the IEC Project site. Either site has sufficient capacity to accommodate all the dredged material. The routing of the dredge disposal pipe to the PCCA DMPA-13 would be from the IEC site along a submerged pipe route across the channel to the DMPA-13 site, then along the shore toward the south so the dredged material and water would have sufficient settling time as it flows back to the DMPA outfall. The disposal pipe length would be approximately 6,000 feet in length. The site is approximately 600 acres and the dikes would be built up to allow the placement of the dredged materials from the IEC site. By additional dike building, this site is sufficiently large enough to handle multiple projects. The IEC project may also use the Reynolds Metal Company site for dredge placement. Reynolds Metal Company has indicated that they have three potential areas for dredge placement; DMPA's #1, #2 and #3. The routing of the dredge disposal pipe to the Reynolds Metal Company site has two potential optional routings. The dredge disposal line length would be approximately 20,000 feet in length. The routings would not interfere with the normal shipping traffic on La Quinta Channel. The piping would be routed either on property owned by Occidental, the PCCA disposal site, or be routed on easements controlled and secured by Reynolds Metal Company. All routing of the dredge lines would be aboveground except for the west leg which would cross La Quinta

Channel. This portion of the line would be a submerged dredge line to eliminate any interference with shipping in La Quinta Channel. Maintenance Dredging: Based on the operating history of the existing dock, maintenance dredging of the relocated dock and the new slip and maneuvering basin is expected to be required about every 10 to 12 years. Due to the long time span between the initial dredging and the first expected maintenance dredging, it would be speculative to state where the spoils would be placed from the maintenance dredging. However, IEC anticipates that they could use the areas discussed above, DMPA #13 or Reynolds Metal Company ponds if they were still available, or they would use another property permitted disposal area. Construction Access because the marine facilities are inaccessible from land, materials would be brought to the site via barges and constructed from working marine barges including a crane barge, working barge, and tender boat. The supply barges that come to the construction area would generally berth to the construction barges for the time of unloading. Most of the materials would be stored on the construction barges. Deliveries of piling, concrete and support materials for the construction of the docks are expected to occur periodically during the entire five- to six-month construction period. Barge deliveries are anticipated to average roughly two to three per week. There would be no need for temporary berthing facilities for the construction of the marine or terminal work. Pipeline: The total length of the proposed route is 26.4 miles and parallels existing utility and/or road corridors for approximately 86.5 percent of the route. The typical land uses traversed by a majority of the pipeline route are cropland, pastureland, and shrub and brush rangeland for the segment paralleling the GulfTerra pipeline. This route is not located within any of the nearby urban or residential areas or communities. The pipeline crosses several Federal, state, county, or private roads, two railroads, and numerous other pipelines. It also crosses Chiltipin Creek and Oliver Creek, as well as several unnamed drainage/irrigation ditches. The pipeline would be installed by trenching/open cut except for Horizontal Directional Drill (HDD) installations proposed for Oliver and Chiltipin Creeks and the drainage canals in order to avoid significant construction or operational impacts. Approximately nine HDD's are planned totaling 9,600 feet in length. In general, the right-of-way configuration for this pipeline would require 50 feet of new permanent right-of-way and 50 feet of temporary construction workspace parallel to the right-of-way. Extra workspace would be necessary at road, railroad, wetland, and waterbody crossings. The final phase of pipeline construction would be cleanup and restoration of the right-of-way. Impacts To Jurisdictional Wetlands And Waters: Forty (40) acres of submerged land would be disturbed by dredging to achieve a working depth of minus 43 feet MLT. Approximately 1.32 acres of fringe wetlands and 3.08 acres of tidal flats were identified along the La Quinta Channel within the footprint of the area to be excavated for the slip. Dredging operations would also impact 1.07 acres of seagrasses. No mitigation is proposed for these impacts at this time. CCC Project No.: 05-0189-F1; Type of Application: U.S.A.C.E. permit application #23630 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501141

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 15, 2005

## Comptroller of Public Accounts

### Amended Notice of Request for Proposals

Pursuant to Chapter 2155, Section 2155.001, Chapter 403, Section 401.011 and Chapter 2156, Section 2156.121, Texas Government Code; the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #172d) from qualified, firms to provide Outbound Mailing Services to the Comptroller. The successful respondent, if any, will provide outbound mailing services to the Comptroller on an as needed basis as described in the RFP. This Amended Notice of Request for Proposals is in lieu of and in substitution for the Notice of Request for Proposals (RFP 172d) published on March 18, 2005.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 28, 2005, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Monday, March 28, 2005, 2:00 p.m. (CZT).

Pre-proposal conference: A pre-proposal conference will be held on April 15, 2005 at 111 E. 17th St., Rm 212c, Austin, Texas, 78774. Conference time is 10:00 a.m. CZT. Attendance at the pre-proposal conference is not a prerequisite to submitting a proposal but is strongly encouraged.

Questions and Mandatory Letters of Intent: All written inquiries, questions, and Mandatory Letters of Intent to propose must be received at 111 E. 17th Street, Rm G-24, Austin, Texas 78774 not later than 2:00 p.m. (CZT) on Monday, April 18, 2005. Prospective respondents are encouraged to fax Mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent so that they are received in that office (Room G-24) by the above date and time. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of letters of intent in that office (ROOM G-24). On or about Thursday, April 21, 2005, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, May 6, 2005. Proposals received in ROOM G-24 after this time and date will not be considered regardless of the reason for the late delivery and receipt.

Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 28, 2005, 2:00 p.m. CZT; Pre-Proposal Conference- April 15, 2005, 10:00 a.m. CZT; Mandatory Letters of Intent to propose and Questions Due - April 18, 2005, 2:00 p.m. CZT; Official Responses to Questions posted - April 21, 2005, or as soon thereafter as practical; Proposals Due - May 6, 2005, 2:00 p.m. CZT; Contract Execution - May 31, 2005, or as soon thereafter as practical; and Commencement of Project Activities -June 1, 2005 for any necessary transition in preparation for services to begin September 1, 2005.

TRD-200501188

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 16, 2005

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/21/05 - 03/27/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/21/05 - 03/27/05 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200501140

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 15, 2005

## Credit Union Department

### Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Neighborhood Credit Union (Dallas) seeking approval to merge with KGR Credit Union (Dallas). Neighborhood Credit Union will be the surviving credit union.

An application was received from City Credit Union (Dallas) seeking approval to merge with NorTex Federal Credit Union (Gainesville). City Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501181

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 16, 2005

### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Cypress Creek Pest Control, Inc., and their subsidiaries, affiliates or successors, who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Texas Health Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship, and businesses within a ten mile radius of the credit union's office located at 4800 Grover Avenue, Austin, Texas, to be eligible for membership in the credit union.

An application was received from U. S. Employees Credit Union, The Woodlands, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten mile radius of the credit union's branch office, located at 9700 Richmond, Suite 150, Houston, Texas 77042, to be eligible for membership in the credit union.

An application was received from Ward County Teachers Credit Union (#1), Monahans, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Ward, Brewster, Crane, Jeff Davis and Pecos Counties, Texas, to be eligible for membership in the credit union.

An application was received from Ward County Teachers Credit Union (#2), Monahans, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Ector County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcud.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501180

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: March 16, 2005

◆ ◆ ◆  
**Notice of Final Action Taken**

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

**Application(s) to Expand Field of Membership - Approved**

Fort Worth Community Credit Union (#5), Bedford, Texas (Conditional)- See *Texas Register* issue dated April 30, 2004.

St. Joseph's Credit Union, San Antonio, Texas- See *Texas Register* issue dated November 26, 2004.

Texas Dow Employees Credit Union, Lake Jackson, Texas- See *Texas Register* issue dated November 26, 2004.

Associated Credit Union of Texas, Texas City, Texas- See *Texas Register* issue dated December 31, 2004.

Texas Bay Area Credit Union, Pasadena, Texas- See *Texas Register* issue dated December 31, 2004.

Texas Employees Credit Union, Dallas, Texas- See *Texas Register* issue dated December 31, 2004.

Harlingen Area Teachers Credit Union, Harlingen, Texas- See *Texas Register* issue dated December 31, 2004.

InvesTex Credit Union, Houston, Texas (Amended)- Persons who live within a 10-mile radius of the InvesTex Credit Union offices located at: 905 Aldine Bender Road, Houston, TX 77032 and 230 Cypresswood, Spring, TX 77388.

**Application(s) to Amend Articles of Incorporation- Approved**

Dresser Central Credit Union, Houston, Texas- See *Texas Register* issue dated December 31, 2004.

**Application(s) for a Merger or Consolidation- Approved**

Houston Association of Realtors Credit Union (Houston) and First Service Credit Union (Houston)- See *Texas Register* issue dated December 3, 2004.

TRD-200501182  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: March 16, 2005

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

**Notice of District Petition**

Notice mailed March 10, 2005

TCEQ Internal Control No. 02022005-D04; Big Creek, Ltd.; Bonbrook Plantation, L.P.; and Beazer Homes Texas, L.P. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 155 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following:

(1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 448.6692 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction and the corporate limits of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2004-28, effective December 14, 2004, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$26,800,000.

**INFORMATION SECTION**

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501185  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 15, 2005

◆ ◆ ◆  
**Notice of Water Quality Applications**

The following notices were issued during the period of March 8, 2005 through March 14, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

AQUA UTILITIES, INC. which operates the Country View Estates Water Treatment Plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004701000, to authorize the discharge of filter backwash and reverse osmosis reject water at a daily average flow not to exceed 17,280 gallons per day via Outfall 001. The facility is located northeast of Medina Lake on Park Road 37 approximately 2.5 miles west of State Highway 16 and approximately 10.5 miles northwest of the City of Helotes, Medina County, Texas.

CITY OF AUSTIN has applied for a renewal of TPDES Permit No. 10543-011, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 75,000,000 gallons per day. The facility is located approximately one mile east of the intersection of Farm-to-Market Road 969 and U.S. Highway 183, on the south side of Farm-to-Market Road 969 in Travis County, Texas.

CITY OF BURKBURNETT which operates a water treatment plant, has applied to for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004753000, to authorize the discharge of water treatment wastes at a daily average flow not to exceed 30,000 gallons per day via Outfall 001. The facility is located at 1953 Ashton Road, approximately 2.5 miles east of the City of Burkburnett, Wichita County, Texas.

THE CITY OF GREGORY has applied to for a renewal of TPDES Permit No. 10092-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located at 300 Sunset at the intersection of Sunset Road and Blackwelder Street, approximately 1/2 mile northwest of the convergence of U.S. Highway 181 and State Highway 35 and southwest of the City of Gregory in San Patricio County, Texas.

KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10414-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located northeast and adjacent to the intersection of Interstate Highway 10 and Farm-to-Market Road 473, east of Comfort in Kendall County, Texas.

THE CITY OF ORANGE GROVE has applied for a renewal of TPDES Permit No. 10592-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located on the east side of County Road 351, approximately 0.5 mile south of the City of Orange Grove and approximately 0.9 mile south of the intersection of County Road 351 and Farm-to-Market Road 624 in Jim Wells County, Texas.

CITY OF ORANGE has applied for a renewal of TPDES Permit No. 10626-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,000,000 gallons per day. The facility is located at 402 South 10th Street, between Jackson Street and Polk Avenue and approximately 1,800 feet west of Farm-to-Market Road 1006 (Border Street) in Orange County, Texas.

CITY OF ROSENBERG has applied for a renewal of TPDES Permit No. WQ0010607003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000

gallons per day. The facility is located at 2700 Avenue A, southeast of the intersection of 8th Street and Avenue A, approximately one mile north of the Missouri Pacific Railroad in the City of Rosenberg in Fort Bend County, Texas.

SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. 10749-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,830,000 gallons per day. The facility is located at 9638 Schaefer Road in City of Converse, approximately 0.5 mile southeast of the intersection of Farm-to-Market Roads 78 and 1516 in Bexar County, Texas.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF SHERMAN to incorporate a substantial modification to the approved pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 16,000,000 gallons per day. The existing permit authorizes the land application of Class A sewage sludge for beneficial use. The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The wastewater treatment facility and sludge treatment works are located south of the Farm-to-Market Road 1417 Bridge over Post Oak Creek on the west side of Post Oak Creek southeast of the City of Sherman in Grayson County, Texas. The treated effluent is discharged to Post Oak Creek; thence to Choctaw Creek; thence to the Red River Below Lake Texoma in Segment No. 0202 of the Red River Basin.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of Permit No. 11364-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 12,800 gallons per day via irrigation of 1.5 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located adjacent to Interstate Highway 10, approximately 4.0 miles east of the intersection of Interstate Highway 10 and Farm-to-Market Road 1604 in Bexar County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 12014-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 32,000 gallons per day via surface irrigation of 13 acres of pastureland. The draft permit authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 16,000 gallons per day via surface irrigation of 6.1 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the north side of Honey Creek, approximately 6.8 miles northwest of the intersection of State Highway 46 and U.S. Highway 281 in Comal County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE**

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an additional interim phase at a daily average flow not to exceed 500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 2.1 miles east-northeast of the intersection of Farm-to-Market Roads 1093 and 723 in Fort Bend County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 10 DAYS OF THE ISSUED DATE OF THIS NOTICE.**

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF HOUSTON, DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, P.O. Box 262549, Houston, Texas 77207-2549, to correct a typographical error in the Biomonitoring Requirements on Page 28, Item 1.e. of the existing permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 720,000,000 gallons per day. The facility is located south of the City of Alief and on the south bank of Keegans Bayou; approximately 3,600 feet west of Keegan Road and 1,600 feet north of West Bellfort Avenue in Harris County, Texas.

TRD-200501186

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 16, 2005



## Notice of Water Rights Application

Notice mailed March 16, 2005.

Application No. 5871; The North Texas Municipal Water District (NTMWD), P.O. Box 2408, Wylie, Texas 75098, seeks a Temporary Water Use Permit pursuant to 11.138 of the Texas Water Code, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. NTMWD seeks authorization to divert and use not to exceed 750 acre-feet of water per year for a 3-year period (for a total of 2,250 acre-feet of water) from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for agricultural purposes to facilitate the development of a constructed wetland. Diversion will be from the East Fork Trinity River near the crossing at Highway 175, 10.6 miles west-northwest of the City of Kaufman in Kaufman County, located at Latitude 32.621 N and Longitude 96.491 W, also being S59.062 E, 5,030 feet from the west corner of the D. Wilkerson Survey, Abstract No. 566, in Kaufman County. The water will be diverted, at a maximum diversion rate of 3.342 cfs (1,500 gpm), into an off-channel constructed wetland reservoir, which is located S35.9514 E, 6,104 from the west corner of the D. Wilkerson Survey, also located at Latitude 32.606 N and Longitude 96.494 W. The off-channel constructed wetland reservoir will have a surface area of 234 acres and will impound 143 acre-feet of water. Water diverted but not consumed, estimated not to exceed 38 acre-feet of water per year, will be returned to the East Fork Trinity River. NTMWD's ownership of the land upon which the constructed wetland will be constructed is evidenced by an Agreement for Easements Permitting Water District Use of the Seagoville Ranch recorded as Document 00017410, Book OR, Volume 2476, Page 327 through 353 of the Deed Records of Kaufman County, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on December 3, 2004, and additional information and fees were received January 31, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 6, 2005.

## INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501184

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 16, 2005



## Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 9, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 9, 2005**.

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 2000 IIG Inc. dba Diamond Smart 2; DOCKET NUMBER: 2004-2000-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Number 39845, Regulated Entity Reference Number (RN) 101801157; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,910; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Shreehari Krupa Corporation dba BP Foodmart; DOCKET NUMBER: 2004- 2066-PST-E; IDENTIFIER: PST Number 47417, RN102265451; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and (ii)(I), and the Code, §26.3475(a) and (c)(1), by failing to provide adequate release detection, by failing to conduct a line leak detector test, and by failing to conduct a piping test; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding underground storage tank (UST) annual registration fees; PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: CHS Inc.; DOCKET NUMBER: 2004-1723-PST-E; IDENTIFIER: RN100529015; LOCATION: Littlefield, Lamb County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414- 3520, (806) 796-7092.

(4) COMPANY: Chevron Pipe Line Company; DOCKET NUMBER: 2004-0592-AIR-E; IDENTIFIER: General Operating Permit Number 515, Air Permit Number 49038, Air Account Number SG-00033-L, RN100215128; LOCATION: Hermleigh, Scurry County, Texas; TYPE OF FACILITY: crude oil pipeline station; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 49038, General Operating Permit Number 515, and THSC, §382.085(b), by failing to meet the volatile organic compound emission limits; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2004-1617-AIR-E; IDENTIFIER: Air Account Number BL0042G, Air Permit Number 5682A, RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5682A, and THSC, §382.085(b), by exceeding the permitted limits during an avoidable emissions event; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: DSM Nutritional Products, Inc.; DOCKET NUMBER: 2004-1271-AIR-E; IDENTIFIER: Air Account Number BL0033H, RN101190221; LOCATION: Freeport, Brazoria County,

Texas; TYPE OF FACILITY: medicinal chemicals and botanical products manufacturing; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit the ECT-1 Form, Annual Compliance Report; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Charles Donaldson; DOCKET NUMBER: 2004-0264-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1012607, RN101232213; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(B), (K), and (O) and §290.43(e), by failing to make available upon request a sanitary control easement, by failing to provide a well casing 18 inches above the elevation of the finished floor, by failing to properly screen the well casing vent, and by failing to secure the hypochlorinator solution containers and pumps in a secure closure; 30 TAC §290.110(b)(4), (c)(5)(A), and (d)(3), by failing to maintain a free chlorine residual concentration of 0.2 milligrams per liter, by failing to perform the chlorine residual tests, and by failing to possess a chlorine test kit which uses the Diethyl-p-Phenylenediamine method; 30 TAC §290.46(m) and (v), by failing to maintain good housekeeping and by failing to install all water system electrical wiring in a securely mounted conduit; 30 TAC §290.42(e)(5), by failing to house the hypochlorinator in an enclosed building; 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.43(d)(2), by failing to provide the pressure tank with an easily readable pressure gauge; PENALTY: \$5,150; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Dung Phat, Inc. dba D P Seafood; DOCKET NUMBER: 2004-1585-PST-E; IDENTIFIER: PST Facility Identification Number 67176, RN101882603; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Sidheshwar Singh dba Fairmont Food Mart; DOCKET NUMBER: 2004-1747- PST-E; IDENTIFIER: PST Facility Identification Number 73660, RN101848232; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Arcelia Garcia dba Garcia's Food Store; DOCKET NUMBER: 2004-1420- PST-E; IDENTIFIER: PST Facility Identification Number 10661, RN101431476; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.48(c), by failing to perform inventory control; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(c)(1), by failing to monitor the USTs in manner which will detect a release and by failing to monitor the piping; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the vapor recovery equipment; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative receive training and instruction in the operation and maintenance of the Stage II vapor

recovery system (VRS); PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Joe Pratt dba Harbor Light Marina; DOCKET NUMBER: 2004-1866-PST-E; IDENTIFIER: PST Facility Identification Number 47523, RN101541399; LOCATION: Mabank, Kaufman County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Industrial Models, Inc.; DOCKET NUMBER: 2004-1993-AIR-E; IDENTIFIER: Air Account Number CV0058H, RN100225952; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: plastics products manufacturing; RULE VIOLATED: 30 TAC §122.146(1) and THSC, §382.085(b), by failing to submit the required annual permit compliance certification; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Jarral's International, Inc. dba Express Lane Mobil Mart; DOCKET NUMBER: 2004-1778-PST-E; IDENTIFIER: PST Facility Identification Number 43965, RN101826402; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$820; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Permian Real Estate Inc. dba Southland Homes; DOCKET NUMBER: 2004- 1741-WQ-E; IDENTIFIER: RN104403878; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: general contracting company; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$600; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: TammyMalik Enterprises, Inc. dba Poolville One Stop; DOCKET NUMBER: 2004-1837-PST-E; IDENTIFIER: PST Facility Identification Number 69150, RN101557841; LOCATION: Poolville, Parker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$800; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Ram Diversified, Inc. dba Copperfield Texaco; DOCKET NUMBER: 2004- 1802-PST-E; IDENTIFIER: PST Facility Identification Number 66810, RN102390234; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,940; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239- 2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(17) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2004-1683-PWS-E; IDENTIFIER: PWS Number 0310006, RN101209195;

LOCATION: Rio Hondo, Cameron County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (2) and (f)(4) and (5), and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes and haloacetic acids; PENALTY: \$575; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Joey Sulak dba Riverside Drive In; DOCKET NUMBER: 2004-1910-PST-E; IDENTIFIER: PST Facility Identification Number 33310, RN102271590; LOCATION: near East Bernard, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Bobby Joe Williams dba Sparky's Quick Stop; DOCKET NUMBER: 2004- 2025-PST-E; IDENTIFIER: PST Facility Identification Number 74071, RN101435568; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and (4)(A)(ii)(II), and the Code, §26.3475(c)(1), by failing to monitor the regular unleaded UST for releases and by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a removable point; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to provide and maintain the Stage II VRS; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay the UST registration annual fee; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Jayesh I. Patel dba Spring Creek Trading Post; DOCKET NUMBER: 2004- 1656-PST-E; IDENTIFIER: PST Facility Identification Number 16768, RN102493285; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$800; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490- 3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(21) COMPANY: J. H. Strain & Sons, Inc. dba JH Strain & Sons Bean Pit; DOCKET NUMBER: 2004-1037-WQ-E; IDENTIFIER: RN102747862; LOCATION: near Lueders, Haskell County, Texas; TYPE OF FACILITY: rock crushing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(22) COMPANY: Tri State Electric, Ltd.; DOCKET NUMBER: 2004-2090-AIR-E; IDENTIFIER: Air Account Number EE1700B, PST Facility Identification Number 25113, RN100818558; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: electrical contracting; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly having dispensed gasoline with an oxygen content lower than the 2.7% by weight; PENALTY: \$720; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.



(23) COMPANY: City of Waller; DOCKET NUMBER: 2004-1798-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010310001, RN102844834; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010310001, and the Code, §26.121(a), by failing to comply with the permit effluent limits for total chlorine residual and carbonaceous biochemical oxygen demand; PENALTY: \$4,448; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Weatherford Aerospace, Inc.; DOCKET NUMBER: 2004-1477-AIR-E; IDENTIFIER: Air Account Number PC0008N, RN100218734; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: chemical milling; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Nuraj Enterprises, Inc. dba West End Grocery; DOCKET NUMBER: 2004-1578-PST-E; IDENTIFIER: PST Registration Number 20385, RN101676096; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Moniral Islam dba Woodforest Texaco; DOCKET NUMBER: 2005-0161-PST-E; IDENTIFIER: PST Facility Identification Number 34836, RN103941951; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200501142

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 15, 2005

## Office of the Governor

### Notice of Extension of Closing Date for Receipt of Applications for the Juvenile Accountability Block Grant (JABG) Program for Statewide Discretionary Projects

The Office of the Governor, Criminal Justice Division (CJD), published a request for applications for the Juvenile Accountability Block Grant (JABG) Program in the February 4, 2005, issue of the *Texas Register* (30 TexReg 591). This notice is published to extend the closing date for receipt of applications.

The published paragraph regarding the closing date for receipt of applications is replaced with the following paragraph, which contains the new closing date for receipt of applications:

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 8, 2005.

TRD-200501190

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: March 16, 2005

### Notice of Extension of Closing Date for Receipt of Applications for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program

The Office of the Governor, Criminal Justice Division (CJD), published a request for applications for the Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program in the February 4, 2005, issue of the *Texas Register* (30 TexReg 592). This notice is published to extend the closing date for receipt of applications.

The published paragraph regarding the closing date for receipt of applications is replaced with the following paragraph, which contains the new closing date for receipt of applications:

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 8, 2005.

TRD-200501191

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: March 16, 2005

### Notice of Extension of Closing Date for Receipt of Applications for the Title V - Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program.

The Office of the Governor, Criminal Justice Division (CJD), published a request for applications for the Title V - Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Program in the February 4, 2005, issue of the *Texas Register* (30 TexReg 594). This notice is published to extend the closing date for receipt of applications.

The published paragraph regarding the closing date for receipt of applications is replaced with the following paragraph, which contains the new closing date for receipt of applications:

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before April 8, 2005.

TRD-200501192

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: March 16, 2005

## Texas Health and Human Services Commission

### Notice of Adopted Payment Rates for Small State-Operated Facilities in the Intermediate Care Facilities for Persons With Mental Retardation Program

Proposal. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts a per diem payment rate of \$199.04 for small state-operated facilities in

the Intermediate Care Facilities for Persons with Mental Retardation program for SFY 2005, effective September 1, 2004.

HHSC conducted a public hearing to receive public comment on the proposed payment rate for small state-operated facilities in the Intermediate Care Facilities for Persons with Mental Retardation program. The hearing was held in compliance with Title 1 of the Administrative Code (TAC), §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on December 7, 2004, at 11:00 a.m., in the Palo Duro Conference Room of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021.

Methodology and justification. The adopted rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.456.

TRD-200501122

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 14, 2005

◆ ◆ ◆  
**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Austin	ARA Imaging	L05862	Austin	00	02/28/05
Austin	North Austin Surgery Center LP	L05832	Austin	00	03/08/05
Fort Worth	Fort Worth Surgery Center	L05848	Fort Worth	00	02/25/05
Houston	ERM Enviroclean-Southwest LLC	L05877	Houston	00	03/01/05
Houston	The Houston Proton Therapy Center-Houston LTD LLP DBA The M D Anderson Cancer Proton Therapy Center	L05859	Houston	00	03/04/05
Katy	Concept Phoenix Diagnostics LP DBA Radiant Imaging and Diagnostics	L05864	Katy	00	03/01/05
Wichita Falls	North Texas Surgi Center	L05847	Wichita Falls	00	02/25/05
Throughout Tx	Master Industries Inc	L05872	Liberty	00	03/09/05

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Cardiology Consultants PA	L04315	Abilene	28	03/03/05
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	15	03/04/05
Austin	South Austin Cancer Center	L05108	Austin	10	03/10/05
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	15	03/01/05
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	16	03/10/05
Beaumont	Christus Saint Elizabeth Hospital DBA Saint Elizabeth Hospital	L00269	Beaumont	96	02/25/05
Beaumont	Lamar University Risk Management	L04047	Beaumont	21	02/28/05
Brownsville	JRG Equipment DBA Springman Medical Plaza	L05831	Brownsville	01	03/07/05
Channelview	Enpro Systems LTD	L04990	Channelview	15	03/04/05
Corpus Christi	Mestena Uranium LLC	L05360	Corpus Christi	04	03/07/05
Corpus Christi	Narain D Mangla MD PA	L05630	Corpus Christi	02	03/10/05
Dallas	Cardiac Associates of Dallas	L05793	Dallas	01	03/03/05
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	01	02/28/05
Del Rio	Val Verde Regional Medical Center	L01967	Del Rio	26	03/03/05
Denton	Triad Denton Hospital LP DBA Denton Community Hospital	L04003	Denton	35	03/04/05
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	02	03/04/05
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	62	03/08/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Fort Worth	Radiology Associates	L03953	Fort Worth	37	03/04/05
Friendswood	ISO Tex Diagnostics Inc	L02999	Friendswood	40	03/09/05
Houston	Cardinal Health	L01911	Houston	126	03/09/05
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	47	03/09/05
Houston	Doctors Hospital 1997 LP DBA Doctors Hospital Parkway	L01964	Houston	43	03/03/05
Houston	Institute of Biosciences and Technology	L04681	Houston	20	03/02/05
Houston	River Oaks Medical Center LP DBA Twelve Oaks Medical Center	L02432	Houston	44	03/10/05
Houston	The Methodist Hospital	L00457	Houston	131	02/25/05
La Porte	J V Industrial Co LTD	L05785	La Porte	01	02/28/05
Longview	Eastman Chemicals Company	L00301	Longview	98	03/09/05
Mesquite	Baylor Medical Center – Mesquite DBA Baylor Diagnostic Imaging Center	L04914	Mesquite	16	03/04/05
Mesquite	Baylor Medical Center – Mesquite DBA Baylor Diagnostic Imaging Center	L04914	Mesquite	17	03/08/05
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	74	03/07/05
Muenster	Muenster Hospital District DBA Muenster Memorial Hospital	L04887	Muenster	08	03/04/05
Odessa	Golder CAT Scan and MRI Center	L04770	Odessa	06	02/25/05
Olney	Olney Hamilton Hospital District DBA Hamilton Hospital	L03226	Olney	14	03/04/05
Orange	Cardinal Health 414 Inc DBA Cardinal Health Nuclear Pharmacy Services	L04785	Orange	30	03/07/05
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	03	02/25/05
Pasadena	Mohamed O Jeroudi MD PA	L05753	Pasadena	05	03/07/05
Pasadena	Pasadena Refining System Inc	L01344	Pasadena	26	03/04/05
Plano	Texas Regional Heart Center PA DBA Legacy Heart Center	L03704	Plano	26	03/01/05
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	28	03/08/05
Port Arthur	The Medical Center of Southeast Texas LP DBA Park Place Medical Center	L01707	Port Arthur	54	03/04/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	200	03/11/05
San Antonio	Patent Pharmaceuticals Inc DBA PETNET San Antonio	L05569	San Antonio	06	03/02/05
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	45	03/08/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	135	03/09/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	142	03/10/05
San Marcos	Central Texas Medical Center	L03133	San Marcos	20	02/28/05
San Marcos	Texas State University	L03321	San Marcos	17	02/25/05
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	07	03/08/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	66	03/10/05
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	96	03/09/05
Throughout Tx	Computalog Wireline Services Inc	L04286	Fort Worth	54	03/01/05
Throughout Tx	The Dow Chemical Company	L00451	Freeport	76	03/11/05
Throughout Tx	AITEC USA Inc	L05718	Houston	09	03/07/05
Throughout Tx	BJ Services Company USA	L02684	Houston	46	03/10/05
Throughout Tx	ERM Enviroclean-Southwest LLC	L05877	Houston	01	03/08/05
Throughout Tx	HVJ Associates Inc	L03813	Houston	26	03/07/05
Throughout Tx	Protechnics vision of Core Laboratories LP	L03835	Houston	44	03/10/05
Throughout Tx	ADJ Services	L04142	Longview	15	03/09/05
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	51	03/04/05
Throughout Tx	Anatec Inc	L04865	Nederland	59	03/04/05
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	02	03/09/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	89	03/04/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	90	03/07/05
Throughout Tx	Newpark Environmental Services of Texas LP	L04999	Winnie	08	02/28/05
Throughout Tx	Soloco Texas LP	L04708	Winnie	13	02/25/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Baylor College of Dentistry	L00323	Dallas	34	02/28/05
El Paso	TENET Hospitals Limited DBA Sierra Medical Center	L04758	El Paso	17	03/01/05
Houston	Real Inspection Training Engineering	L05136	Houston	11	02/28/05
Jacksonville	East Texas Medical Center Jacksonville	L00169	Jacksonville	36	02/28/05
Lubbock	Covenant Health System DBA Covenant Medical Center – Lakeside	L01547	Lubbock	82	03/04/05
Port Arthur	The Medical Center of Southeast Texas LLP DBA Park Place Medical Center	L01707	Port Arthur	55	03/11/05
San Antonio	Christus Santa Rosa Cancer Center LLP	L00556	San Antonio	43	02/28/05
Texarkana	Red River Pharmacy Services	L05077	Texarkana	15	02/28/05
Throughout Tx	Longview Asphalt Inc	L04827	Longview	06	02/28/05
Throughout Tx	NDS Products Inc	L00991	Pasadena	40	02/28/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Comanche	Commanche Community Hospital	L03234	Commanche	10	03/02/05
Houston	Tejas Tubular Processing Inc	L04852	Houston	02	03/04/05
Throughout Tx	Heflin Testing Services Inc	L04671	Denison	09	03/10/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	Lark Technologies Inc	L04387	Houston		03/10/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200501176  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: March 16, 2005

Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: March 16, 2005

◆ ◆ ◆  
Notice of Agreed Order with Brazos Valley Inspection Services, Inc.

On March 10, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Brazos Valley Inspection Services, Inc. (licensee-L02859) of Bryan. A total administrative penalty in the amount of \$4,000 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289. The licensee will also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501172  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: March 16, 2005

◆ ◆ ◆  
Notice of Agreed Order with Eastside Family Chiropractic, P.A.

On March 9, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Eastside Family Chiropractic, P.A. (registrant-R22723) of Beaumont. A total administrative penalty in the amount of \$500 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501173

◆ ◆ ◆  
Notice of Opportunity for Certification as a Retail Electronic Cash Register System for the Special Supplemental Nutrition Program for Women, Infants and Children Electronic Benefits Transfer System

On June 1, 2004, the Department of State Health Services (department) began piloting an off-line, smart card based electronic benefit transfer (EBT) system in the El Paso, Texas area. The EBT system replaces the paper voucher system supporting food delivery for participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The department plans to expand EBT system operations beyond El Paso as early as October, 2005; statewide rollout is expected to be complete in November, 2006. WIC participants redeem food benefits at any one of more than 2700 WIC-authorized retail sites statewide.

Retail electronic cash register (ECR) systems capable of initiating WIC EBT transactions are divided into two types: Integrated and Stand Beside (Stand Alone). Integrated WIC EBT systems are ECR systems that have been modified to accept WIC smart cards, initiate off-line WIC EBT transactions and decrement authorized amounts from the food prescription stored on the card, and transmit claim files to the WIC host processor for settlement. Integrated WIC EBT systems accept multiple tender types, such as cash, credit, debit, food stamps, Temporary Assistance to Needy Families (TANF) and WIC. Stand Beside or Stand Alone WIC EBT systems are single-tender ECR systems designed to accept only WIC EBT cards in payment for the delivery of authorized WIC foods. A Stand Beside WIC EBT system operates alongside a store's existing ECR system, requiring the clerk to 'double-scan' items into and to maintain UPC and price data in both the store and WIC EBT ECR systems. A WIC EBT system is 'Stand Alone' if the grocer currently has no installed ECR. Texas WIC expects the majority of WIC-authorized supermarkets, medium and large grocery chains, independents and convenience stores will use integrated WIC EBT systems. Small volume WIC stores and those stores selling only WIC foods are expected to use either a stand beside or stand alone WIC EBT system.

In El Paso, grocers purchased their own hardware and operating system software from the vendor designated by Texas WIC. Texas WIC employed a Retail Support Contractor to provide help desk support and on-site services, including hardware warranty and maintenance.

In Texas, the Stand Beside WIC EBT system piloted in El Paso consists of a custom host software application (kWICpos), Hypercom ICE 6000 terminals with an Application Programming Interface (API), and a back room controller. Currently, WIC provides Level II and Level III software support to grocers operating stand beside and stand alone WIC EBT systems. Texas WIC acquires and processes claims submitted by WIC-authorized stores for settlement.

#### ECR CERTIFICATION

Texas WIC would like to determine if a commercially available "low cost" small grocer solution will be available for WIC-authorized grocers in lieu of continuing to develop/maintain kWICpos software and provide hardware and software support in El Paso and eventually statewide. To be eligible for consideration, an ECR system must be certified as "WIC Ready" in Texas. Texas WIC has implemented a comprehensive ECR certification process confirmed to ensure system accuracy, reliability, integrity and performance.

Grocer ECR system and software manufacturers, technicians, and others are encouraged to provide product and service information and pricing to WIC for ECR systems that may be able to achieve WIC certification. Information on any ECR system(s) certified will be distributed to all WIC authorized grocers who have not yet committed to the implementation of an integrated system.

#### CONTACT INFORMATION

Interested parties should contact either John Brewer at (512) 458-7444 or Penny Tisdale at (512) 415-2227, Department of State Health Services, 1100 West 49th Street, Austin, Texas, not later than April 12, 2005.

TRD-200501174  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: March 16, 2005



#### Notice of Proposed Administrative Renewal of the Radioactive Material License of Everest Exploration, Incorporated

Notice is hereby given by the Department of State Health Services (department) that it proposes to grant an administrative renewal pursuant to 25 Texas Administrative Code (TAC), §289.260(h), for a two-year period to Radioactive Material License Number L03626 issued to Everest Exploration, Incorporated for facilities located in Karnes County, Texas near Hobson, Texas, and Falls City, Texas, and in Live Oak County, Texas, near Dinero, Texas.

The department has determined that the licensee has paid its license renewal fee, has a satisfactory compliance history, and otherwise complies with the requirements of 25 TAC, §289.260(h).

This notice affords the opportunity for a public hearing, upon written request by a person affected within 30 days of the date of publication of this notice as required by Health and Safety Code, §401.264, and as set out in 25 TAC, §289.205(d). A "person affected" is defined as a person who demonstrates that the person has suffered, or will suffer, actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Division for Regulatory Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request

for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the proposed issuance of the license will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21, et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the proposed license and information regarding the license renewal is available for public inspection and copying, by appointment, at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Tountage, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200501175  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: March 16, 2005



#### Texas Department of Housing and Community Affairs

##### Multifamily Housing Revenue Bonds (Lafayette Village Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Cloverleaf Elementary School, 1035 Frankie, Houston, Texas 77015, at 6:00 p.m. on April 12, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Lafayette Village Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 250-unit multifamily residential rental development to be located at approximately the 4800 block of East Sam Houston Parkway North, on the east side of East Sam Houston Parkway North, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de

llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501171

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 16, 2005

◆ ◆ ◆  
**Houston-Galveston Area Council**

Public Meeting Notice

**Public Meetings on the**

**Transportation Conformity Determination, the Draft 2025 Regional Transportation Plan**

**and the Draft 2006-2008 Transportation Improvement Program**

**Wednesday, March 9, 2005, 6 p.m. - 8 p.m.**

**North Harris Montgomery Community College**

**5000 Research Forest Drive, Training Center**

**The Woodlands, Texas 77381**

**Wednesday, March 16, 2005, 6 p.m. - 8 p.m.**

**Pearland City Hall**

**3519 Liberty Drive**

**Pearland, Texas 77581**

**Wednesday, March 23, 2005, 6 p.m. - 8 p.m.**

**Sugar Land City Hall**

**2700 Town Center Blvd. North**

**Sugar Land, Texas 77479**

**Wednesday, March 30, 2005, 6 p.m. - 8 p.m.**

**Houston-Galveston Area Council**

**3555 Timmons Lane, 2nd Floor, Conference Room A**

**Houston, Texas 77027**

The Houston-Galveston Area Council (H-GAC) is hosting a series of public meetings on the **Transportation Conformity Determination, the Draft 2025 Regional Transportation Plan (RTP) and the Draft 2006-2008 Transportation Improvement Program (TIP)**. The 2025 RTP provides a framework for identifying transportation priorities and major transportation challenges, such as regional mobility, air quality and safety. The conformity analysis was conducted by H-GAC to ensure that projects within the 2025 RTP meet our region's air quality goals. The TIP is a comprehensive listing of transportation projects approved for funding and implementation within a three-year period. The public is encouraged to attend one of these important meetings and provide comments to H-GAC on the Transportation Conformity Determination, the Draft 2025 RTP and the Draft 2006-2008 TIP.

The public comment period on the Transportation Conformity Determination, the Draft 2025 RTP and the Draft 2006-2008 TIP began **Wednesday, February 9, 2005**. Comments must be received by H-GAC no later than **5 p.m., Thursday, March 31, 2005**. Copies

of the documents are available on H-GAC's Transportation Web site, **[www.h-gac.com/transportation](http://www.h-gac.com/transportation)**, or by contacting Shelley Whitworth at [shelley.whitworth@h-gac.com](mailto:shelley.whitworth@h-gac.com) or (713) 499-6695. Written comments may be submitted to Alan Clark, MPO Director, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, emailed to [transportation.comments@h-gac.com](mailto:transportation.comments@h-gac.com) or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Kim Green at (713) 993-4577 to make arrangements.

TRD-200501109

Alan Clark

MPO Director

Houston-Galveston Area Council

Filed: March 11, 2005

◆ ◆ ◆  
Public Meeting Notice

**Public Meeting on**

**Amendments to the 2004-2006 Transportation Improvement Program (TIP)**

**Tuesday, March 29, 2005**

**6 p.m. - 7 p.m.**

**Baytown City Council Chambers**

**2401 Market Street**

**Baytown, Texas 77520**

On Tuesday, March 29, 2005, the Houston-Galveston Area Council (H-GAC) will host a public meeting on proposed amendments to the 2004-2006 Transportation Improvement Program (TIP). The public is encouraged to attend this important meeting and provide comments to H-GAC.

Proposed TIP amendments to be discussed include:

TIP Amendment 132 - Increase funding to Dixie Farm Road projects from FM 518 to Beamer Road that are scheduled to begin in FY 2005.

TIP Amendment 143 - Add construction of grade separation at U.S. 59 and FM 360 (Fort Bend County) to 2004 TIP.

TIP Amendment 150 - Add right of way acquisition for I-10 W. east of Silber to the I-610/I-10 interchange; and add right of way acquisition for I-610 W. south of Post Oak Blvd. to IH-10.

TIP Amendment 151 - Add reconstruct and widening project on I-10 E. near Trinity River Bridge.

TIP Amendment 154 - Modify the project limits and funding for the IH-10 project - Gellhorn to Mercury: widen from 6 to 8 mainlanes and complete I-10 to I-610/U.S. 90 interchange; add U.S. 90 project - I-10 to 0.290 miles West of Mercury Drive: construct 4-lane freeway with grade separation at Oates Road to the 2004 TIP.

The public comment period on the proposed amendments begins **Sunday, March, 13, 2005**, and all comments must be received by H-GAC no later than **5 p.m., Monday, April 18, 2005**. Written comments may be submitted to Lynn Spencer, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, emailed to [tip@h-gac.com](mailto:tip@h-gac.com), or faxed to (713) 993-4508.



Copies of the proposed amendments will be available at the meeting and at [www.h-gac.com/transportation](http://www.h-gac.com/transportation), or by contacting Lynn Spencer, Transportation Program Coordinator, at (713) 993-2436 or [lynn.spencer@h-gac.com](mailto:lynn.spencer@h-gac.com).

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received 24 hours prior to the function. Call Adriana Montalvo at (281) 420-5394 to make arrangements.

TRD-200501110  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: March 11, 2005



## Public Meeting Notice

### Comment Period Deadline Extended on the

### Transportation Conformity Determination, the Draft 2025 Regional

### Transportation Plan

### and the Draft 2006-2008 Transportation Improvement Program

The public comment period on the Transportation Conformity Determination, the Draft 2025 Regional Transportation Plan (RTP) and the Draft 2006-2008 Transportation Improvement Program (TIP) has been extended. The comment period began **Wednesday, February 9, 2005** and comments must be received by H-GAC no later than **5 p.m., Friday, April 1, 2005**. The documents can be downloaded from H-GAC's Transportation Web site, [www.h-gac.com/transportation](http://www.h-gac.com/transportation), or CD-ROMs are available by contacting Shelley Whitworth at [shelley.whitworth@h-gac.com](mailto:shelley.whitworth@h-gac.com) or (713) 499-6695. Written comments may be submitted to Alan Clark, MPO Director, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, emailed to [transportation.comments@h-gac.com](mailto:transportation.comments@h-gac.com) or faxed to (713) 993-4508.

The 2025 RTP provides a framework for identifying transportation priorities and major transportation challenges, such as regional mobility, air quality and safety. The conformity analysis was conducted by H-GAC to ensure that projects within the 2025 RTP meet our region's air quality goals. The TIP is a comprehensive listing of transportation projects approved for funding and implementation within a three-year period.

TRD-200501111  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: March 11, 2005



## Request for Proposal

### (TRN 05-4440-01)

H-GAC is seeking consulting services to develop a conceptual plan for a project consisting of comprehensive pedestrian and bicycle improvements in the Gulfton district of the city of Houston. The Consultant (team) will work with the local community and stakeholders to develop a comprehensive plan of pedestrian-bicycle improvements, and calculate the congestion mitigation, air quality, and safety benefits of implementing the project(s). H-GAC will pursue local sponsorship and

the programming of the pilot project in its Transportation Improvement Program (TIP).

A Pre-Proposal Conference is scheduled at **2 p.m. on Wednesday, March 16, 2005**, at H-GAC in Conference Room A on the second floor. Submittals are due by **4:30 p.m. on Thursday, March 31, 2005**. Seven (7) typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted.

The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at [www.h-gac.com/transportation](http://www.h-gac.com/transportation). Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Dan Raine at 832-681-2525. All questions regarding the Request for Proposals can be sent to the attention Dan Raine by email to [dan.raine@h-gac.com](mailto:dan.raine@h-gac.com), faxed to 713-993-4503, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777.

TRD-200501107  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: March 11, 2005



## Request for Proposal

### (TRN 05-4440-02)

H-GAC is seeking consulting services to develop a conceptual plan for a project consisting of comprehensive pedestrian and bicycle improvements in the Montrose district of the city of Houston. The Consultant (team) will work with the local community and stakeholders to develop a comprehensive plan of pedestrian-bicycle improvements, and calculate the congestion mitigation, air quality, and safety benefits of implementing the project(s). H-GAC will pursue local sponsorship and the programming of the pilot project in its Transportation Improvement Program (TIP).

A Pre-Proposal Conference is scheduled at **2 p.m. on Wednesday, March 16, 2005**, at H-GAC in Conference Room A on the second floor. Submittals are due by **4:30 p.m. on Thursday, March 31, 2005**. Seven (7) typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted.

The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at [www.h-gac.com/transportation](http://www.h-gac.com/transportation). Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Dan Raine at 832-681-2525. All questions regarding the Request for Proposals can be sent to the attention Dan Raine by email to [dan.raine@h-gac.com](mailto:dan.raine@h-gac.com), faxed to 713-993-4503, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777.

TRD-200501108  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: March 11, 2005



## Joint Financial Regulatory Agencies

### Notice of Public Meeting

The Joint Financial Regulatory Agencies comprised of the Finance Commission of Texas and the Texas Credit Union Commission (the "Commissions") have proposed new 7 TAC §§152.1, 152.3, 152.5, 152.7, and 152.15 (Chapter 152), concerning interpretations related to a lien on a homestead for home improvement. The interpretations address the requirements to establish a constitutional lien on a homestead for work and materials used to construct new improvements and to repair and renovate existing improvements. The interpretations address consent required of spouses and the locations required for execution of contracts for work and materials used to repair or renovate existing improvements.

The Credit Union Commissioner and the Consumer Credit Commissioner have been delegated the authority to conduct a public meeting for the purpose of receiving oral comments, views, and/or testimony concerning the proposed interpretations. A public meeting on these proposed interpretations will be held in Austin on March 24, 2005, at 1:00 p.m. in the State Finance Commission Building, William F. Aldridge Hearing Room, located at 2601 North Lamar Boulevard. It is not anticipated that a quorum of commission members will attend the public meeting; however, should a quorum of members be present this will be considered an official meeting. To be considered, an oral comment must be received at this public meeting; at the conclusion of the meeting, no further oral comments will be considered or accepted by the Commissions.

Persons with disabilities who are planning to attend the meeting and have special communication or other accommodation needs should contact the Joann McAnally at the Office of Consumer Credit Commissioner at (512) 936-7640. Requests should be made as far in advance as possible.

TRD-200501168

Leslie L. Pettijohn

Commissioner

Joint Financial Regulatory Agencies

Filed: March 15, 2005

## Texas Lottery Commission

### April 2005 End of Game Notice

These Texas Lottery Commission scratch-off games will close on April 2, 2005. You have until September 29, 2005, to redeem any tickets for these games: #449 12TH ANNIVERSARY MILLION (\$20) overall odds are 1 in 2.78, #476 SAPPHIRE BLUE 7'S (\$2) overall odds are 1 in 4.73, #493 TRIPLE TRIPLER (\$3) overall odds are 1 in 4.66, #494 CASH CRAZE (\$1) overall odds are 1 in 4.69, #498 SPICY 8'S (\$1) overall odds are 1 in 4.69, #503 MONEY MAKER (\$5) overall odds are 1 in 3.76, #505 TEXAS RINGER (\$3) overall odds are 1 in 4.54, #508 JOKER'S WILD (\$1) overall odds are 1 in 4.86, #510 \$100,000 PAY-OUT (\$5) overall odds are 1 in 3.39. The odds listed here are the overall odds of winning any prize in a game, including breakeven prizes. Lottery retailers are authorized to redeem prizes of up to and including \$599. Prizes of \$600 or more must be claimed in person at a Lottery Claim Center or by mail with a completed Texas Lottery claim form; however, annuity prizes or prizes over \$999,999 must be claimed in person at the Commission Headquarters in Austin. Call Customer Service at 1-800-37-LOTTO or visit the Texas Lottery Commission Web

site at [www.txlottery.org](http://www.txlottery.org) for more information and location of nearest Claim Center. The Texas Lottery Commission is not responsible for lost or stolen tickets, or for tickets lost in the mail. Tickets, transactions, players, and winners are subject to, and players and winners agree to abide by, all applicable laws, Commission rules, regulations, policies, directives, instructions, conditions, procedures, and final decisions of the Executive Director. A scratch-off game may continue to be sold even when all the top prizes have been claimed. Must be 18 years of age or older to purchase a Texas Lottery ticket. Play Responsibly. Remember, it's just a game. The Texas Lottery Commission supports Texas education by contributing to the Foundation School Fund.

TRD-200501159

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 15, 2005

### Instant Game Number 540 "Instant Bingo"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 540 is "INSTANT BINGO". The play style is "bingo with bonus spot".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 540 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 540.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and \$0.00.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 540 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$0.00	ZERO\$

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 540 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, or \$500.

I. High-Tier Prize- A prize of \$1,000 or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (540), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 540-0000001-001.

L. Pack - A pack of "INSTANT BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT BINGO" Instant Game No. 540 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 131 (one hundred

thirty-one) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 4 that match the Bingo Numbers and Bonus Numbers on the Caller's Card. Each card has a corresponding prize box.. Players win by matching those same numbers on the four Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical, or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card the player wins prize according to the legend of the respective playing card. In the Instant Bonus play area, if a player reveals a prize amount the player wins prize indicated automatically. The player can win up to four times on any ticket but only once on each "card".

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 131 (one hundred thirty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 131 (one hundred thirty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 131 (one hundred thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 131 (one hundred thirty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. A ticket can win up to four times but only once per Card.

C. Adjacent tickets in a pack will not have identical patterns.

D. There will never be more than one win on a single Bingo Card.

E. No duplicate numbers will appear on the Caller's Card and Bonus Numbers.

F. No duplicate numbers will appear on each individual Player's Card.

G. Each Caller's Card will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The Bonus Numbers will have a maximum of two (2) numbers for each range per letter.

H. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

I. Instant Bonus Game: The Play area consists of one (1) Play Symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT BINGO" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer

shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT BINGO" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "INSTANT BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "INSTANT BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 24,960,000 tickets in the Instant Game No. 540. The approximate number and value of prizes in the game are as follows:



Figure 3: GAME NO. 540 - 4.0

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$2</b>	2,945,280	8.47
<b>\$3</b>	1,248,000	20.00
<b>\$5</b>	898,560	27.78
<b>\$10</b>	149,760	166.67
<b>\$15</b>	49,920	500.00
<b>\$20</b>	399,360	62.50
<b>\$30</b>	36,712	679.89
<b>\$50</b>	73,840	338.03
<b>\$100</b>	23,400	1,066.67
<b>\$500</b>	1,248	20,000.00
<b>\$1,000</b>	55	453,818.18
<b>\$30,000</b>	9	\$2,773,333.33

\*The number of prizes in a game is approximate based on the number of tickets ordered.

The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 540 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 540, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501124

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 14, 2005



Instant Game Number 584 "Gimme 5"

1.0 Name and Style of Game.

A. The name of Instant Game No. 584 is "GIMME 5". The play style is "three in a line with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 584 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 584.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and \$1,500.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 584 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,500	15 HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 584 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
SVN	\$7.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$7.00, \$10.00, \$15.00, \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$1,500.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (584), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 584-0000001-001.

L. Pack - A pack of "GIMME 5" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GIMME 5" Instant Game No. 584 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GIMME 5" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player reveals three 5's play symbols either diagonally, vertically, or horizontally the player wins prize indicated. If a player reveals a 5 play symbol in the Bonus Box play area the player wins \$5.00 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain 3 or more of a kind other than the 5 symbol.

C. The 5 play symbol will only appear in the Bonus Box as dictated by the prize structure.

D. No ticket will have more than one instance of a 5 in a row, column or diagonal as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "GIMME 5" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$7.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00,

\$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIMME 5" Instant Game prize of \$1,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIMME 5" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GIMME 5" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GIMME 5" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 584. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 584 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,512,000	10.00
\$2	907,200	16.67
\$4	241,920	62.50
\$5	241,920	62.50
\$7	60,480	250.00
\$10	60,480	250.00
\$15	60,480	250.00
\$20	30,240	500.00
\$25	12,600	1,200.00
\$50	2,835	5,333.33
\$100	1,260	12,000.00
\$500	315	48,000.00
\$1,500	189	80,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 584 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 584, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501125  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 14, 2005



#### Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.315 relating to "Mega Millions" on-line game will be held at 9:00 a.m. on Thursday, April 7, 2005 at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200501126

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 14, 2005



#### Lower Rio Grande Valley Workforce Development Board

##### Notice - Request for Business Plans for the Workforce System

The Lower Rio Grande Valley Workforce Development Board (Board) d.b.a. WorkFORCE Solutions is a non-profit, tax-exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. WorkFORCE Solutions receives Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices, Food Stamp Employment and Training, and Child Care Development funds, among others. These federal funds pass through the Texas Workforce Commission to WorkFORCE Solutions. WorkFORCE Solutions is seeking Proposals from companies with experience the delivery of workforce and employment services. The Proposals will include a Business Plan for the Workforce System and Qualifications.

Detailed information will be available in the Request for Proposals (RFP) which will be available on March 28, 2005 at 10:00 a.m. You may contact Jenny Newcomb of WorkFORCE Solutions, at (956) 928-5000. The RFP may be obtained in person or by mail from the WorkFORCE Solutions' administration office located at 3406 West Alberta, Edinburg, Texas 78539. Interested Applicant's are to attend the **STATE OF THE WORKFORCE REPORT** scheduled for April 2, 2005 at 10:00 a.m. (location to be announced). The **MANDATORY BIDDER'S CONFERENCE** is scheduled for April 2, 2005 at 2:00 p.m.

at WorkFORCE Solutions Administrative Office, 3406 W. Alberta, Edinburg, Texas.

Proposals are due on or before 3:00 p.m. on May 12, 2005 at WorkFORCE Solutions' administration office. Any responses received after the deadline will not be considered. During the evaluation process an applicant's qualifications will be determined, once the bidder is determined qualified then the business plan evaluation will follow. WorkFORCE Solutions will continue to solicit a Request for Qualified Applicant's for the Workforce System on an ongoing basis, with the intent to maintain a current pool of eligible contractors.

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV.

TRD-200501090

Stella Garcia

Vice President

Lower Rio Grande Valley Workforce Development Board

Filed: March 10, 2005



#### Notice - Request for Business Plans for Workforce System Lead Youth Contractor

The Lower Rio Grande Valley Workforce Development Board d.b.a. WorkFORCE Solutions is a non-profit, tax-exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. WorkFORCE Solutions receives Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices, Food Stamp Employment and Training, and Child Care Development funds, among others. These federal funds pass through the Texas Workforce Commission to WorkFORCE Solutions. WorkFORCE Solutions is seeking Proposals to include Business Plans and Qualifications for a Lead Youth Contractor for the Workforce System. WorkFORCE Solutions is seeking Proposals from companies with experience in workforce and employment services with an emphasis on preparing youth for successful entry into the workforce. The Lead Youth Contractor will be responsible to provide leadership, coordinate, operate and manage workforce services for youth within the Workforce System. This will include the management of current and future youth training contractors and meeting required Youth Performances for Workforce Investment Act and as defined by the Board.

Detailed information will be available in the Request for Proposals (RFP) which will be available on March 28, 2005 at 10:00 a.m. You may contact Jenny Newcomb of WorkFORCE Solutions, at (956) 928-5000. The RFP may be obtained in person or by mail from the WorkFORCE Solutions' administration office located at 3406 West Alberta, Edinburg, Texas 78539. Interested Applicant's are to attend the **STATE OF THE WORKFORCE REPORT** scheduled for April 2, 2005 at 10:00 a.m. (location to be announced). The **MANDATORY BIDDER'S CONFERENCE** is scheduled for April 1, 2005 at 2:00 p.m. at WorkFORCE Solutions Administrative Office, 3406 W. Alberta, Edinburg, Texas.

Proposals are due on or before 3:00 p.m. on May 12, 2005 at WorkFORCE Solutions' administration office. Any responses received after the deadline will not be considered. During the evaluation process a bidder's qualifications will be determined, once the bidder is determined qualified then the business plan evaluation will follow. The Board will continue to solicit a Request for Qualified Bidders for Lead

Youth Contractors on an ongoing basis, with the intent to maintain a current pool of eligible contractors.

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV.

TRD-200501089

Stella Garcia

Vice President

Lower Rio Grande Valley Workforce Development Board

Filed: March 10, 2005



#### Manufactured Housing Division

##### Notice of Administrative Hearing

**Wednesday, April 6, 2005, 1:00 p.m.**

State Office of Administrative Hearings, William P. Clements Building,  
300 W. 15th Street, 4th Floor, Suite 504

Austin, Texas

##### AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Green Tree Servicing, LCC to hear alleged violations of Sections 1201.357, 1201.358, Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) and 80.132(3) of the Administrative Rules by not properly complying with the initial report and warranty orders of the Director and provide the Department with copies of completed work orders, in a timely manner, on the home owned by Philip J. Emerson, HUD Label TEX0461961/62, as required by Sections 1201.357, 1201.358, Sections 1201.354 and 1201.356 of the Act and Sections 80.131(b) (40-day allowance for warranty service) and 80.132(3) (requirement for completed warranty service orders) of the Administrative Rules. Additionally, the hearing will also be on the issue of whether the Department should revoke the retailer's license for failure to provide warranty service in accordance with Section 1201.357(b) of the Act. Department MHD2002001442-RD, MHD2002001479-RD, and MHD2003000215-RD

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200501138

Timothy K. Irvine

Executive Director

Manufactured Housing Division

Filed: March 14, 2005



#### Public Utility Commission of Texas

##### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 8, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Young Energy, LLC for Retail Electric Provider (REP) Certification, Docket Number 30845 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30845.

TRD-200501129  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Consolidated Edison Solutions, Inc. for Retail Electric Provider (REP) Certification, Docket Number 30846 before the Public Utility Commission of Texas.

Applicant's requested service area by geography is the territory of another independent organization to the extent it is within Texas, as follows: limited to C&I customers greater than 50kw.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30846.

TRD-200501130  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TGT Energy LLC for Retail Electric Provider (REP) Certification, Docket Number 30847 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by customers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30847.

TRD-200501132  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of DTE Energy Trading, Inc. for Retail Electric Provider (REP) Certification, Docket Number 30849 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by customers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30849.

TRD-200501133  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Ideal Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 30854 before the Public Utility Commission of Texas.

Applicant's requested service area includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30854.

TRD-200501134

Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005

◆ ◆ ◆  
**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Fryar Energy for Retail Electric Provider (REP) Certification, Docket Number 30838 before the Public Utility Commission of Texas.

Applicant's requested service area includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30838.

TRD-200501135  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005

◆ ◆ ◆  
**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Pre-Buy Electric, LLC for Retail Electric Provider (REP) Certification, Docket Number 30850 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30850.

TRD-200501136  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005

**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of NV Power, L.P. for Retail Electric Provider (REP) Certification, Docket Number 30851 before the Public Utility Commission of Texas.

Applicant's requested service area includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30851.

TRD-200501137  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On March 7, 2005, Time Warner Cable filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60670. Applicant intends to discontinue traditional switched telephone service to customers residing in the Crystal Falls subdivision in Leander, Texas.

The Application: Application of Time Warner Cable for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 30834.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 30, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30834.

TRD-200501127  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On March 8, 2005, New Access Communications LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60458. Applicant intends to reflect a change in ownership/control to North Central Equity LLC as the result of a corporate restructuring.



The Application: Application of New Access Communications LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 30841.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 30, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30841.

TRD-200501128  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Filing Made for Approval of a Tariff Rate Change for a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) with the Public Utility Commission of Texas (commission) on February 28, 2005, to make a tariff rate change.

Docket Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 30803.

The Application: Mid-Plains has filed a statement of intent with the commission to offer two-way extended local calling service between the subscribers of the following exchanges at no additional fee: Goodnight and Bean; Goodnight and Cleta; Goodnight and Elkins; Goodnight and Gurley; Goodnight and Kress; Goodnight and Redmon; Goodnight and Silverton; Goodnight and Umbarger; and Goodnight and Vigo Park.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Mid-Plains Rural Telephone Cooperative, Inc. at P.O. Box 300, Tulia, Texas 79088 or call (806) 995-3572 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is May 9, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200501131  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 14, 2005



#### Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on March 11, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or around March 22, 2005.

Docket Title and Number: Application of Southwestern Bell Telephone Company, L.P., doing business as SBC Texas, for Approval of LRIC Study on Duplicate Billing Cost Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 30865.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30865. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 30865.

TRD-200501153  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 15, 2005



#### Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 9, 2005, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Verizon Southwest's request for two 1,000-blocks of numbers in the Dickinson ISD in Dickinson, Texas.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Neustar Denial of Number Block Request in the Dickinson Rate Center. Docket Number 30853.

The Application: Verizon submitted an application to the Pooling Administrator (PA) for numbering resources in the Dickinson rate center. The PA denied the request based on the grounds that Verizon had not met the rate center-based month-to-exhaust criteria set forth in the Thousands-Block Number (NXX-X) Pooling Administration Guidelines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 30, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30853.

TRD-200501149  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 15, 2005



## Notice of Public Hearing to Address Complaints of Residents of the Pinewood Subdivision Against SBC Texas and the Quality of Telecommunications Service in the Pinewood Subdivision

The staff of the Public Utility Commission of Texas (commission or PUC) will hold a public meeting to address complaints of residents of the Pinewood Subdivision against SBC Texas and the quality of telecommunications service in the Pinewood Subdivision, in Sour Lake, Texas on Thursday, April 28, 2005, at 7:00 p.m. at Idylwild Golf Club's Clubhouse located at: 1100 E Pineshadows Drive, Sour Lake, Texas 77659. PUC Docket Number 30122, *Complaint of Pinewood Civic Association, Incorporated Against SBC Texas*, has been established for the commission to investigate the complaints of the residents in the Pinewood Subdivision. This current docket has been abated to allow the commission to hold a public meeting to determine the extent of any telecommunications service problems in the Pinewood Subdivision. The complaint filed in this docket alleges that SBC is providing substandard local wire service through its Westbury Exchange and that background noise is interfering with dial-up modems and residents' ability to carry on regular communications with other parties. The commission, through the public meeting, hopes to discover what telecommunications service problems, if any, exist in the Pinewood Subdivision, and to determine possible solutions to such problems.

Questions concerning the public meeting should be referred to Paula S. Hunt-Wilson, Staff Attorney, Legal and Enforcement Division, at (512)-936-7294. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200501093

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 10, 2005

## Texas A&M University, Board of Regents

### Request for Proposal

Texas A&M University is seeking Proposals from experienced consultants for assistance in determining the advisability of consolidating the University's Directory and Messaging Services System and, if appropriate, providing recommendations of architectural design alternatives. Additionally, in the event the University decides to act on any of the recommendations by implementing one of the recommended designs, the consultant shall provide guidance to the University, or any other parties involved, in implementing the selected design. The President of Texas A&M University has affirmed the necessity of an experienced Consulting Firm for assistance with regard to this project.

All documents pertaining to this Request for Proposal are available on the Electronic State Business Daily (<http://esbd.tbpc.state.tx.us>) under agency requisition number "RFP MAIN 05-0022."

Information may also be obtained by contacting:

Jonathan Pierson, CTP, C.P.M., A.P.P.

Senior Buyer

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

[jw-pierson@tamu.edu](mailto:jw-pierson@tamu.edu)

Selection criteria is based on best value which shall include price, services, company experience, demonstrated competence and qualifications, references, past experience, and the ability to meet established schedule. Proposals must be received on or before 2:00 p.m. on Thursday, May 26, 2005.

TRD-200501187

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: March 16, 2005

## Texas Department of Transportation

### Request for Competing Proposals and Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 361, Subchapter I (the "Enabling Legislation"), the Texas Department of Transportation (TxDOT) may enter into comprehensive development agreements for the design, construction, financing, maintenance, or operation of turnpike projects on the state highway system. The Enabling Legislation authorizes private involvement in turnpike projects and provides a process for accepting and processing unsolicited proposals for such projects. Transportation Code, §361.3022 prescribes requirements for an unsolicited proposal and requires TxDOT, if a decision is made to further evaluate the unsolicited proposal, to publish a request for competing proposals and qualifications in the *Texas Register* that includes the criteria that will be used to evaluate the original proposal and any competing proposals, the relative weight given to the criteria, and a deadline by which the competing proposals must be received. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, §§27.1-27.5 (the "Rules"), governing the submission and processing of unsolicited proposals and providing for publication of notice that TxDOT is seeking competing proposals and qualifications for development of a turnpike project with private involvement. The commission has received an unsolicited proposal and made a determination to further evaluate the unsolicited proposal.

This notice represents the next step in the process of responding to an unsolicited proposal received by TxDOT on January 7, 2005 from a consortium led by Skanska BOT AB (Skanska) to develop, design, construct, finance, and operate as a concession project the proposed SH 121 turnpike project from Business SH 121 to US 75 in Denton and Collin counties, as well as other potential facilities to the extent necessary for connectivity and financing. The portion of the proposed turnpike project in Denton County is already under construction by TxDOT. The proposed turnpike project is approximately 24 miles long, and would include six limited access tolled mainlanes for the entire length of the project, along with nearly continuous frontage roads. Interchange and direct connector improvements are also included. On February 24, 2005, in Minute Order 109980, the commission authorized TxDOT to commence the unsolicited proposal procurement process under Transportation Code, Chapter 361, Subchapter I.

Through this notice, TxDOT is seeking competitive proposals and qualifications submittals ("PQS") in response to a request for competing proposals and qualifications ("RFPQ"). TxDOT intends to evaluate the proposal submitted by Skanska and may request submission of a detailed proposal, potentially leading to negotiation, award, and execution of a comprehensive development agreement. TxDOT will accept for simultaneous consideration any PQS received in accordance with the Rules within 90 days of the publication of this notice. TxDOT anticipates issuing the RFPQ, receiving and analyzing the PQSs, developing a shortlist of proposing entities or consortia, and issuing a request

for detailed proposals ("RFDP") to the shortlisted entities. After review and a best value evaluation of the RFDP responses, TxDOT may negotiate and enter into a comprehensive development agreement for the project.

**RFQP Evaluation Criteria.** PQSs will be evaluated by TxDOT for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications and legal qualifications; relative strength, feasibility and desirability of the proposed conceptual project development plan; and relative strength, feasibility and desirability of the proposed conceptual project financing plan. The specific criteria under the foregoing subcategories will be identified in the RFQP, as will the relative weighting of the criteria.

**Release of RFQP and Due Date.** TxDOT currently anticipates that the RFQP will be available on March 25, 2005. The RFQP will include a conceptual project design. Copies of the RFQP will be available at TxDOT's offices: Texas Department of Transportation, 125 East 11th Street, 5th Floor, Austin, Texas 78701, or on the following website: <http://www.dot.state.tx.us>. PQSs will be due on June 23, 2005.

TRD-200501179

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: March 16, 2005



## Texas Water Development Board

### Request for Applications for Planning and Project Grants Under the FEMA Flood Mitigation Assistance (FMA) Program

The Texas Water Development Board (Board) requests the submission of applications leading to the possible award of grants to develop Flood Mitigation Plans and implement flood mitigation projects for areas in Texas from communities with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the State may submit applications for Flood Mitigation Assistance planning and project grants. The available allocated amounts for Federal Fiscal Year 2005 are \$114,000 for Planning Grants and \$1,300,000 for Project Grants. These grants all require a 25 percent local match, of which not more than one-half (12.5 percent) may be in the form of in-kind services. No award for a Planning Grant may exceed \$50,000, and no single community may receive more than one Planning Grant per 5-year period.

The purpose of the FMA Program is to provide Planning and Project grants to develop or update Flood Mitigation Plans and for implementing flood mitigation projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repetitively or substantially damaged structures and associated claims under the NFIP and encouraging long-term comprehensive mitigation planning.

Planning Grants are awarded to eligible communities to develop the Flood Mitigation Plan for their planning area. Among the requirements

for Project Grant applications is this FEMA approved Flood Mitigation Plan. A copy of the approved Plan must be submitted as an attachment to the applicant's submittal. Information contained within the NFIP Community Rating System (CRS) for the applying community may suffice as a Flood Mitigation Plan; however, approval of this information as a Flood Mitigation Plan is made by FEMA. In addition, applicants must supply a map of the geographical planning area and/or the area considered for the flood mitigation project. Deadline for submitting applications for the Planning and/or Project Grant funds is 5:00 P.M., June 23, 2005. Eight double-sided copies of completed Planning and/or Project Grant applications, including the required attachments and Federal forms, must be filed with the Executive Administrator prior to the respective deadline dates.

Applications will be evaluated according to rules provided in 31 TAC Chapter 368. Potential applicants should contact the Board to obtain these rules (which include eligibility requirements), as well as applications for Planning and Project Grants, and the instruction sheets for completing the application, directing requests to Ms. Phyllis Thomas at (512) 463-7926, or Mr. Gilbert Ward at (512) 463-6418, by e-mail to [phyllis.thomas@twdb.state.tx.us](mailto:phyllis.thomas@twdb.state.tx.us), or by going to the Board's web site at [www.twdb.state.tx.us](http://www.twdb.state.tx.us) under the heading, "Hot Topics". Completed applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 537, 1700 North Congress Avenue, Austin, Texas; or by mail to the attention of Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-200501165

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: March 15, 2005



## Texas Workers' Compensation Commission

### Correction of Error

The Texas Workers' Compensation Commission proposed amendments to 28 TAC §§112.102, 112.200, 112.402, 133.401, 133.403, 140.1, and 140.4; proposed repeal of Chapters 145, 148 and 149; proposed new §134.303, Chapters 148 and 149. The rules were published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1225). The publication contains the following errors as submitted by the Commission.

Page 1225, right column, 10th full paragraph of the preamble: Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The preamble to §133.401 and §133.403 contained errors as follows:

Page 1228, left column, 3rd full paragraph. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The preamble to §134.303 contained errors as follows:

Page 1230, right column, 10th full paragraph. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The preamble to §140.1 and §140.4 contained errors as follows:

Page 1232, left column, 9th full paragraph of Chapter 140. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The preamble to Chapter 145 contained errors as follows:

Page 1233, right column, 6th full paragraph. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The preamble to new Chapter 148 contained errors as follows:

Page 1240, right column, 1st full paragraph. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

The rule text of proposed new §148.7 contained errors as follows:

Page 1245, left column, §148.7(a). Change section number from §150.03 to §150.3. The sentence should read as follows:

"(a) Representation of injured employees or insurance carriers. Pursuant to §402.071 of the Act (relating to Representatives) and §150.3 of this title (relating to Representatives: Written Authorization Required), a person representing an injured employee or insurance carrier in a contested case hearing shall not receive a fee for providing representation under this subtitle unless the person is an adjuster representing an insurance carrier or licensed to practice law."

Page 1245, left column, §148.7(b). Change section number from section 150.03 to §150.3. The last sentence should read as follows:

"The provision of representation before SOAH as an extension of, or in addition to, other services for which a fee was paid shall be considered receipt of a fee for providing representation as specified in sections 401.011(37) and 402.071 of the Act and §150.3 of this title (relating to Representatives: Written Authorization Required)."

The preamble to new Chapter 149 contained errors as follows:

Page 1249, right column, 4th full paragraph. Change comment deadline. The sentence should read as follows: "Comments on the proposal must be received by 5:00 p.m., April 7, 2005."

TRD-200501177



### Correction of Error

The Texas Workers' Compensation Commission adopted amendments to 28 TAC §134.402, concerning the Ambulatory Surgical Center Fee Guideline. The adoption notice was published in the March 4, 2005, *Texas Register* (30 TexReg 1290). The preamble contained an error as submitted by the Commission.

On page 1308, right column, 2nd Response, the paragraph should read as follows: "RESPONSE: The commission disagrees with the suggested change. Addition of this language could add complexity to the billing and reimbursement process, be difficult to administer, and not be standardized throughout the industry. Adding complexity could lead to increased auditing requirements resulting in delayed payments and potentially increase disputes. In addition, the Act limits the definition of health care provider, which may preclude recommended language addition in this rule. In developing this targeted reimbursement approach, the commission did not intend to either expand or limit billing models that are allowed under Medicare payment policies required by the Act."

TRD-200501183

Kaylene Ray

Director, Legal Services

Texas Workers' Compensation Commission

Filed: March 16, 2005



### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

#### Primary

\* Public Health Care Facility

#### Alternate

\* Public Health Care Facility

\* Dentist

\* Podiatrist

\* Employer

\* Employee

\* General Public Representative 1

\* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the *Procedures and Standards for the Medical Advisory Committee* as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the *Procedures and Standards for the Medical Advisory Committee*. These *Procedures and Standards* are as follows:

**LEGAL AUTHORITY** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public

to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION Membership.** The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS Primary Members.** Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

**Alternate Members.** Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

**Committee Officers.** The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

**Responsibilities of the Chairman:** Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

**COMMITTEE SUPPORT STAFF** The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

**SUBCOMMITTEES** The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

**WORK GROUPS** When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

**WORK PRODUCT** No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

**MEETINGS** Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

**CONDUCT AS A MAC MEMBER** Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501158

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: March 15, 2005

◆ ◆ ◆

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**

*(Please fill out information below)*

☐ **Paper Subscription**

☐ One Year \$240

☐ First Class Mail \$300

☐ **Back Issue (\$10 per copy)**

\_\_\_\_\_ Quantity

Volume \_\_\_\_\_, Issue # \_\_\_\_\_.

*(Prepayment required for back issues)*

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_

*(Number for change of address only)*

**Payment Enclosed via** ☐ Check ☐ Money Order

Mastercard/VISA Number \_\_\_\_\_

Expiration Date \_\_\_\_/\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

\_\_\_\_\_  
\_\_\_\_\_  
Periodical Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_